

CHAPTER 2

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Enrolling Members; Administering the Oath

§ 1. In General

Before a newly convened body of Representatives-elect can begin exercising all its constitutional functions as a legislative assembly, Members-elect must become full legal Members of the House, having satisfied all qualifications and having sworn to uphold the Constitution and to faithfully perform their duties.⁽¹⁾ The process through which Members-elect become Members consists of four steps: first, the presentation of individual credentials; second, the preparation of the Clerk's roll; third, the administration of the

1. "[T]he legal existence of a legislative body is dependent upon compliance with the constitutional requirements regarding membership." Sutherland, *Statutory Construction* §404 (3d ed. 1943). That general statement of legislative law must be qualified in its applicability to the House of Representatives, since the House has sole jurisdiction over elections and qualifications of Members-elect (U.S. Const. art. I, §5, clause 1). If the House seats a Member, the courts will not question the validity of legislative action in which the Member participates, even lacking satisfaction of election and qualification requirements. See *Lyons v Woods*, 153 U.S. 649 (1894).

oath to duly qualified and elected Members; fourth, the resolution of challenges to the qualifications and elections of individual Members.

This chapter covers the administration of those four steps of proceeding during the organization of a newly convened House of Representatives. The scope of the chapter is limited, however, to the basic procedure governing those orders of business; the reader is referred elsewhere for a discussion of the substantive issues related to credentials, election contests, and elections and election campaigns.⁽²⁾ This chapter likewise does not concern itself with those general aspects of procedure and orders of business connected with organization.⁽³⁾

Some discussion of substantive law is necessarily included in this chapter, such as the rights and duties accruing to those persons elected to Congress but not yet

2. See Ch. 8, *infra*, for the form, validity, and grounds for challenges of credentials. See Ch. 8, *infra*, for elections and election campaigns, and Ch. 9, *infra*, for election contests.
3. See Ch. 1, *supra*, for the orders of business at organization, and for the procedure that is followed.

seated and sworn by the House, since the status of those Members-elect is specifically related to the presentation of credentials, the preparation of the Clerk's roll, and the administration of the oath. Some mention is also made of the substantive state law which the Clerk must review in determining whether to enroll Members-elect.

The preparation, transmission to the House, and custody of the credentials of Members-elect are discussed in this chapter, as are their use in preparing the Clerk's roll. The form of the Clerk's roll and its relationship to the regular roll of the House and to the administration of the oath receives analysis.

The chapter covers the history and form of the oath of office, the procedure of its administration, the types of resolutions relating to the right to be sworn, and the related subject of challenges, including form, procedure, and preliminary House action.

There are several points of substantive procedure which should be kept in mind in any discussion of the enrolling of Members and the administration of the oath. The first is that the enrolling and the swearing in of Members-elect are authorized and regulated by provisions of the U.S. Constitution

and the United States Code.⁽⁴⁾ Therefore, the House and its officers follow an established procedure when undertaking those orders of business.

Second, the House is governed, as stated above,⁽⁵⁾ by general parliamentary law during the period of organization and before the adoption of rules. Since the rules are not adopted until after the administration of the oath, en masse, to the membership-elect,⁽⁶⁾ most of the activities covered in this chapter take place while general parliamentary law, and not the body of standing rules, is in effect.

Third, the order in which activities take place during the organization of the House is governed both by tradition and by statute.⁽⁷⁾ The oath is administered to Mem-

4. The principal provisions are: U.S. Const. art. VI, clause 3 (requirement of oath administration); U.S. Const. art. I, §5, clause 1 (House sole judge of elections and qualifications); 2 USC §25 (procedure of oath administration and record evidence thereof); 2 USC §26 (preparation of Clerk's roll and regularity of credentials).

5. See, generally, Ch. 1, *supra*.

6. For the priority of oath administration over the adoption of rules, based on 2 USC §25, see Ch. 1, 7, *supra*.

7. For the sequence of organizational business, while the Speaker is presiding at organization, see Ch. 1, §7, *supra*.

bers directly after the Speaker has been elected and has been sworn, and before the completion of other organizational business or before the consideration of general legislative business.

The fourth aspect of procedure related to this chapter is the functions of officers. The receipt of credentials by the House, and the preparation and calling of the Clerk's roll, are functions exercised by the Clerk of the preceding House.⁽⁸⁾ The administration of the oath to Members and floor action taken on challenges are presided over by a newly-elected Speaker, whose scope of authority during the organizational period should be reviewed for a comprehensive understanding of how those orders of business are completed by the House.⁽⁹⁾

The final area of substantive procedure relating to the enroll-

8. See 2 USC §26. For the authority and functions of the Clerk of the preceding House at the organization of Congress, see Ch. 1, §5, *supra*.
9. For the Speaker's functions and authority after he has been elected at the convening of a new Congress, see Ch. 1, §7, *supra*. For his entertainment of motions during the organizational period, see Ch. 1, §9, *supra*; for his rulings on action on resolutions, including those relating to oath administration, during organization, see Ch. 1, §12, *supra*.

ment of Members and to the administration of the oath is the delineation of authority between state and federal government. Since the House depends on the individual states for the administration of elections and the preparation of credentials, issues may be suggested in this chapter as to those powers reserved for the states and those granted to the House of Representatives under the U.S. Constitution. The reader is referred to other portions of this work for discussion of such issues.⁽¹⁰⁾

§ 2. Status of Members-and Delegates-elect

The issue has often arisen, both in Congress and in the courts, whether the scope of privileges and prerogatives enjoyed by Members of Congress fully extends to those persons elected to Congress but not yet sworn.⁽¹¹⁾

10. See Ch. 8, *infra*, on elections and election campaigns, and Ch. 9, *infra*, on election contests, which discuss the respective roles of the state and federal governments.
11. In early times, Thomas Jefferson considered the status of Members-elect and concluded that a Member elected "is to every extent a Member except that he cannot vote until he is sworn" (Jefferson's Manual, *House*

Some of the statutory and constitutional provisions relating to the incidents of House membership, primarily those of qualifications and disqualifications, have produced lengthy House debate on whether they apply only to sworn Members or also to Members-elect before the assembly of Congress or before the administration of the oath.⁽¹²⁾ However, most such pro-

Rules and Manual § 300 [1973]), and as recently as 1933 Speaker Henry T. Rainey (Ill.) opined that Members-elect do not enjoy all the rights and privileges of Members until sworn (see § 2.1, *infra*). For a lengthy and general discussion whether a Member-elect is as much an officer of the government before being sworn as after, see 1 Hinds' Precedents § 185.

Although the Supreme Court has not specifically ruled on the status of Members-elect, various lower courts have considered the question (see, *e.g.*, *U.S. v Dietrich*, 126 F 676 [C.C. Neb. 1904]). Several quasi-judicial opinions on the subject may be found in the Opinions of the Attorney General (see 14 Op. Att'y Gen. 133 [1872]; 14 Op. Att'y Gen. 406 [1874]; 16 Op. Att'y Gen. 271 [1879]).

12. The Senate has determined that Senators-elect must be at the time of election residents of the representative state but need not meet the age and citizen requirements until appearing to be sworn. See S. REPT. NO. 904, 74th Cong. 1st Sess. reprinted at 79 CONG. REC. 9651-53 [1935]. For a full discussion, see Ch. 7, *infra*. As to the holding of incom-

visions distinguish between Members-elect and Members either explicitly or by implication.⁽¹³⁾ This chapter will not attempt to discuss all, or even most, of the rights, privileges, immunities, and qualifications of membership in the House of Representatives.⁽¹⁴⁾

patible offices, the House has decided a Member-elect may retain such office until appearing to be sworn (for a summary list of related precedents and rulings, see *House Rules and Manual* §§ 95-98 [comment to U.S. Const. art. I, § 6, clause 2] [1973]; for detailed analysis, see Ch. 7, *infra*).

13. For example, 39 USC § 3210 (franking privilege) and 2 USC § 34 (compensation) specifically refer to Representatives-elect. Although no constitutional provision uses the term "Member-elect" or "Representative-elect", the Constitution impliedly empowers Members-elect to vote for a Speaker (under art. I, § 2, clause 5, the House chooses a Speaker before the House is sworn), and to demand the yeas and nays (art. I, § 5, clause 3), and uses the term "Representatives" when referring to Members not yet sworn (see art. I, § 6, clause 2 and art. VI, clause 3). Some sections of the United States Code similarly use the term "Members" when obviously referring to Member-elect. See 2 USC § 25 (administration to Speaker of oath by "Member"); 2 USC § 27 (changing the place of meeting before Congress convenes, to protect the health of "Members"). See also 2 USC § 21 (administration of oath to "Senators").
14. For Members immunities, qualifications and disqualifications, see Ch. 7,

Only those aspects of membership which enable Representatives-elect to function in an official capacity after their election but before they have been sworn in will be discussed here.

The status of a Member-elect may be described first by the right to participate in proceedings after the convening of Congress but before the taking of the oath, and second by the constitutional and statutory privileges which become effective by force of election.

Three of the powers authorizing participation in proceedings arise from constitutional provisions: being called for the quorum,⁽¹⁵⁾ voting for Speaker,⁽¹⁶⁾ and demanding the yeas and nays.⁽¹⁷⁾ All of those steps may occur in the House before Members are sworn, and before their rights to seats are determined.⁽¹⁸⁾ As to the initial quorum call at the opening of a Congress, the right of a Member-elect to be included on the Clerk's roll and to be called for

infra. For personal privileges of House membership, see Ch. 11, infra.

- 15. U.S. Const. art. I, §5, clause 1.
- 16. U.S. Const. art. I, §2, clause 5
- 17. U.S. Const. art. I, §5, clause 3
- 18. For quorum calls and demands for the yeas and nays during organization see Ch. 1, §9, supra. For the procedure of electing a Speaker, see Ch. 1, §6, supra.

the quorum is qualified by the statute which directs the preparing of the Clerk's roll. Only if the individual Member's-elect certificate of election, in due form, is on file with the Clerk is his right to be included on the Clerk's roll absolute.⁽¹⁹⁾ And only those Members whose names appear on the Clerk's roll are entitled to vote for a new Speaker at the beginning of a Congress or to otherwise participate in organizational proceedings prior to the administration of the oath.⁽²⁰⁾

The House, in its initial stages, could not complete organizational business if unsworn Members were not entitled to debate propositions, to propose motions, to

- 19. See *Page v U.S.*, 127 U.S. 67 (1888), for the proposition that it is a mandatory step for the Clerk to place on the Clerk's roll the name of a duly certified Member-elect, pursuant to 2 USC §26. For the degree of discretion exercised by the Clerk in enrolling Members-elect, see §4, infra.
- 20. While the Clerk is presiding, he refuses to recognize claimants to seats whose names do not appear on the Clerk's roll. 1 Hinds' Precedents §86. When the time comes for oath administration, a claimant not on the roll may be admitted to membership (see §5, infra) and may be permitted to participate in debate on his right to a seat (see 1 Hinds' Precedents 657-672 and Rule XXXII, clause 1, *House Rules and Manual* §919 [1973]).

offer resolutions, and to raise points of order. Therefore, all Members-elect whose regular credentials are on file with the House may exercise such rights⁽¹⁾ and may also be named to, and serve on, House committees.⁽²⁾ In addition, a Member-elect may

1. See, generally, Ch. 1, *supra*, for the rules of proceeding during organization. Although there are no explicit rulings on the rights of Member-elect to generally participate in proceedings, those rights are unquestioned, since the body of those persons assembled is a "House" before organization is completed (see 1 Hinds' Precedents §82). Members-elect have by rule (Rule XXXII clause 1, *House Rules and Manual* §919 [1973], not technically in effect before the adoption of rules) the privilege of admission to the floor.
2. A Member-elect may be named to a committee before he is sworn (see 4 Hinds' Precedents §§4477, 4483, 4484) and the fact that his seat is being contested is not necessarily taken into account in assigning him to committees (8 Cannon's Precedents §2194). Rank on committees is fixed by the order in which Members were elected and a Member-elect may be restored to original rank after resolution of a contest for his seat (see 8 Cannon's Precedents §2196). Jefferson's Manual states that "before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn." *House Rules and Manual* §300 (1973).

challenge the right of another Member-elect to be sworn,⁽³⁾ and a Member-elect may be permitted to debate a proposition related to his own right to a seat.⁽⁴⁾ (Contestants to the seats of Members-elect may also be granted the privilege of the floor and the right of debate by the House membership.)⁽⁵⁾

Members-elect are entitled to those privileges and immunities which stem from article I, section 6, of the Constitution and from various statutory provisions.⁽⁶⁾ Clause 1 of that section authorizes Members to receive compensation for their services; although the provision does not specifically include Members-elect, Congress has provided by statute for the compensation of Representatives and Delegates-elect, with credentials in due form, from the beginning of the term of Congress.⁽⁷⁾

3. See §6.1, *infra*.
4. See §2.5, *infra*.
5. Contestants in election cases have the privilege of the floor under Rule XXXII clause 1, *House Rules and Manual* §919 (1973). For the right of contestants to participate in proceedings, see Ch. 9, *infra*.
6. For a detailed analysis of immunities, qualifications, and disqualifications of Members, and for the time at which they become effective, see Ch. 7, *infra*.
7. 2 USC §34, providing for compensation from the beginning of the term to the beginning of the session; 2

Additionally, Representatives, Delegates, and Resident Commissioners elected to fill unexpired terms are salaried from the date of their election.⁽⁸⁾ A former provi-

USC § 35 operates after the taking of the oath. If a Member-elect takes the oath and his seat after the commencement of a Congress, he nevertheless receives his salary retroactive to the beginning of the term (see 2 Hinds' Precedents § 1206), but disbursement by the Sergeant at Arms on a monthly basis is not made until the Member takes the oath.

The possibility of double compensation may arise, if a Member-elect retains an incompatible office beyond the beginning of the term of Congress and before he appears to be sworn. On a recent occasion, a Senator-elect who retained an incompatible office six days after the convening of Congress waived his congressional salary for that period (see § 2.6, *infra*). Although an early Attorney General's Opinion (14 Op. Att'y Gen. 406 [1874]) proposed that a Member-elect was entitled to receive pay for both an incompatible office and his congressional seat until appearing to be sworn, a House report cited at 1 Hinds' Precedents § 184 stated (*dicta*) that the precedents of the House neither allowed or disallowed such double compensation.

- 8.** 2 USC § 37. This provision differs from the section relating to Senators who are elected to fill unexpired terms; they receive compensation only from the date they "qualify." 2 USC § 36. The Senate has deter-

sion, forestalling compensation for a Member-elect whose seat was to be contested, has been repealed.⁽⁹⁾

The other privileges allowed Members of Congress by clause 1 (and which are discussed in detail elsewhere in this work)⁽¹⁰⁾ are the privilege from arrest, applicable to Members-elect traveling to Washington for the assembly of Congress,⁽¹¹⁾ and the immunity

mined that a Senator-elect to fill a vacancy does not "qualify" for compensation until he has taken the oath. See Senate resolution of Apr. 29, 1957, 103 CONG. REC. 6060, 85th Cong. 1st Sess.

- 9.** The provision, contained in the Act of Mar. 3, 1873, Ch. 226, § 1, 17 Stat. 488, and repealed by the Act of Mar. 3, 1875, Ch. 130, § 1, 18 Stat. 389, empowered the Clerk to omit from the roll, for purposes of compensation, the name of a Member-elect, until the determination of his right to the seat, upon notice that his seat would be contested. Currently, the returned Member-elect is entitled to the compensation, and if a contestant is subsequently chosen to fill the seat, the contestant is entitled to congressional salary only from the time the compensation of his "predecessor" has ceased. *Page v U.S.*, 127 U.S. 67 (1888).
- 10.** See Ch. 7, *infra*, for immunities, and Ch. 11, *infra*, for the personal privilege of a Member.
- 11.** Privilege from arrest "takes force by place of the election." Jefferson's Manual, *House Rules and Manual* § 300 (1973). See also 1 Hinds' Prece-

against being questioned for any speech or debate in the House, which would seem to apply to Members-elect as well as to qualified Members.⁽¹²⁾

dents §499 (on a related subject), stating that the privilege is “granted by the Constitution to Representatives before a meeting of the House,” in accordance with the common law of Parliament. For an early lower court decision holding that the privilege from arrest extended to the return to his home state of a challenged Member-elect, delayed by want of funds, against whom a contest was decided by the House, see *Dunton and Co. v Halstead*, 2 Clark (Pa. Law Journal Reports) 236 (D.C. Phil. 1840). In that case, however, the claimant to the privilege had journeyed to Washington with the Governor’s official commission to represent Pennsylvania. Since the House requires regular credentials as proof of election (2 USC §26), presumably only a Member-elect who is entitled to have his name placed on the Clerk’s roll would come under the penumbra of the privilege.

12. As the House is technically in session during organization and before swearing-in ceremonies (1 Hinds’ Precedents §§ 82, 87, 88), and as enrolled Members-elect engage in debate before taking the oath (*i.e.*, debate before Speaker’s election, Ch. 1, *supra*, and debate on the taking of the oath itself, §6, *infra*), it may be assumed that Members-elect enjoy the privilege (see 2 Hinds’ Precedents §1655 and 3 Hinds’ Precedents §2675 for the proposition that the

There are, in addition, a number of miscellaneous privileges necessary to the official functioning of Members and Members-elect. Members-elect as well as Members are expected to comply with House traditions as to decorum, and conduct.⁽¹³⁾ The franking privilege is specifically extended to Members-elect, although the scope of the privilege is more restricted for Members-elect than for qualified Members.⁽¹⁴⁾ In addition, Members-elect are entitled by statute and by practice to draw rooms in the House office buildings before they are sworn.⁽¹⁵⁾

The rights and privileges of Delegates-elect and Resident Commissioners-elect are similar to those for Members-elect. By stat-

immunity applies to “things done in a session of the House by one of its Members in relation to the business before it”).

13. For example, by custom of the House, Members-elect may not approach the desk during the call of the roll for the election of a Speaker. 1 Hinds’ Precedents §623.
14. Members-elect have the right to send under their frank correspondence on official business, under 32 USC §3210. They do not have the franking privilege for public documents (32 USC §3211), for the *Congressional Record* (32 USC §3212), or for agriculture reports (32 USC §3213).
15. See 40 USC §§177–184 and *House Rules and Manual* §985 (1973).

ute or by House practice, many of the rights, privileges, and powers of Members-elect are extended to those officials.⁽¹⁶⁾ The important distinction is that Delegates and Resident Commissioners, although they are sworn,⁽¹⁷⁾ are not included on the Clerk's roll to establish a quorum⁽¹⁸⁾ and are not entitled to vote either for the Speaker or on other propositions in the House.

Rights and Privileges Generally

§ 2.1 Members-elect are required by law to take an oath of office and until they so subscribe do not enjoy all the rights and prerogatives of a Member of Congress.

On Mar. 13, 1933,⁽¹⁹⁾ Speaker Henry T. Rainey, of Illinois, re-

16. For example, Pub. L. 91-405, §294(a), Sept. 22, 1970, extended to the D.C. Delegate, among other provisions, the laws as to taking the oath and receiving compensation. For the rights and privileges of Delegates and Resident Commissioners in general, see Rule XII, *House Rules and Manual* §740, and comment thereto, 741 (1973).

17. See §5, *infra*.

18. See §4, *infra*.

19. 77 CONG. REC. 283, 73d Cong. 1st Sess.

sponded as follows to a parliamentary inquiry by Mr. Bertrand H. Snell, of New York:

MR. SNELL: In what way does it change the status of a Member-elect to have the oath administered to him?

THE SPEAKER: He then becomes a full-fledged Member of the House of Representatives, without question.

MR. SNELL: Is he not enjoying all the rights and privileges even at the present time?

THE SPEAKER: The Chair thinks he enjoys many of the privileges, but in order to become a Member he must take the oath prescribed by law.

MR. SNELL: It bestows on him actual membership.

THE SPEAKER: He then has actually become Member

Right to Vote

§ 2.2 Members-elect not responding to the roll call on opening day and not appearing to take the oath en masse with the membership of the House are not included on further roll calls or entitled to vote until they have been sworn.

Those Members-elect to the 91st Congress who did not appear on the opening day, Jan. 3, 1969,⁽²⁰⁾ for the call of the Clerk's roll to establish a quorum and for the swearing in of Members-elect en

20. 115 CONG. REC. 12-15, 91st Cong. 1st Sess.

masse were not placed on the regular roll call of the House for yeas and nays votes until they appeared to be individually sworn by the Speaker. On Jan. 6, Mr. Charles A. Mosher, of Ohio, was sworn, on Jan. 7, Mr. Robert Taft, of Ohio, on Jan. 8, Mr. Donald E. Lukens, of Ohio, on Jan. 9, Mr. Ogden R. Reid, of New York, and on Jan. 28, Mr. Richard T. Hanna, of California.

§ 2.3 Members-elect to fill unexpired terms during the term of a Congress are not entitled to be counted for a quorum or to vote for a new Speaker at the opening of a new session.⁽¹⁾

On Jan. 10, 1962,⁽²⁾ the opening day of the second session, Mr. Henry B. Gonzalez, of Texas, Mr. Joe Waggoner, Jr., of Louisiana, and Mr. Lucien N. Nedzi, of Michigan, all Representatives-elect to fill vacancies, with credentials on file with the Clerk, were not sworn in until after the election of a new Speaker (Speaker

1. This practice, which has occurred only in the instant case, differs from the practice at the opening of a new Congress, where all Members-elect with regular credentials are called to establish a quorum and to vote for a Speaker (see § 4, *infra*).
2. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.

Sam Rayburn, of Texas, had died during the *sine die* adjournment). Their names were not placed on the roll to establish a quorum or to elect a Speaker.

Right to Demand Yeas and Nays

§ 2.4 The yeas and nays may be demanded by one-fifth of the Members before the organization of the House.

On Jan. 4, 1965,⁽³⁾ Speaker John W. McCormack, of Massachusetts, ruled, in answer to a parliamentary inquiry, that prior to rules adoption and prior to the organization of the House, one-fifth of the Members present could demand the yeas and nays.⁽⁴⁾

Right to Debate of Challengee

§ 2.5 A Member-elect, asked to stand aside when the oath is administered to other Members-elect may, by unanimous consent, be permitted to participate in debate on a resolution relating to his right to be sworn.

3. 111 CONG. REC. 19, 20, 89th Cong. 1st Sess.
4. For a ruling by the Clerk, presiding before the election of a Speaker, that the yeas and nays could be demanded by Members-elect, see 1 Hinds' Precedents §91.

On Jan. 10, 1967,⁽⁵⁾ during debate on a resolution relating to the right to be sworn of Mr. Adam Clayton Powell, Jr., of New York, who had been asked to stand aside when the oath was administered to other Members, unanimous consent was asked by Mr. Carl Albert, of Oklahoma, that Mr. Powell be permitted to participate in the debate. The request was granted and the challenged Member-elect delivered remarks in debate.

Right to Compensation

§ 2.6 A Senator-elect who postponed the choice between his congressional seat and an incompatible office six days beyond the convening of Congress waived his congressional pay for that period.

Mr. Jacob Javits, Senator-elect from New York, did not take the oath of office in the 85th Congress until Jan. 9, 1957, although the Senate had convened on Jan.⁽⁶⁾ Mr. Javits appeared late because he did not resign from his position as Attorney General of New York until the day he appeared to take the oath.⁽⁷⁾ He waived his congress-

5. 113 CONG. REC. 15, 90th Cong. 1st Sess.

6. 103 CONG. REC. 340, 85th Cong. 1st Sess.

7. *Biographical Directory of the American Congress 1774-1971*, S. Doc.

sional salary for the period during which he delayed taking the oath.⁽⁸⁾

§ 3. Presentation of Credentials

The device through which the House satisfies itself that it is composed at its first meeting of duly-elected Representatives is the presentation of credentials.⁽⁹⁾ Although the credentials themselves may give rise to substantive questions as to form, validity, and grounds for challenge,⁽¹⁰⁾ the presentation and use of the credentials is largely an administrative matter. Although there are still differences among the states in the preparation of credentials, and in their trans-

No. 92-8, pp. 1183-84, 92d Cong. 1st Sess. (1971).

8. *Senate Manual* §863 (1971) (statistical section). An early opinion of the Attorney General has proposed that until taking the oath a Representative-elect could receive salary for both his congressional position and his other office. 14 Op. Att'y Gen. 408 (1874), cited at 2 USCA §25.

9. For a discussion of the function of credentials in legislative organization, in general, see 1 Hinds' Precedents §631.

10. See Ch. 8, *infra*, for the substantive aspects of credentials as related to elections and election campaigns.

mittal to the House, the process has become more standardized than in former years. Credentials certified by the Member-elect himself,⁽¹¹⁾ or certified by military or de facto governors⁽¹²⁾ or prepared without regard to state law,⁽¹³⁾ have not been received by the House in contemporary practice. In addition, the office of the Clerk requires strict compliance with state law, pursuant to federal statute, before enrolling a Member-elect;⁽¹⁴⁾ disputes have seldom arisen as to the Clerk's action in accepting credentials.⁽¹⁵⁾

11. See 1 Hinds' Precedents §427 (Senate credentials).
12. See 1 Hinds' Precedents §§383, 388.
13. See 1 Hinds' Precedents §605 (credentials showed on face they were not issued according to law); 1 Hinds' Precedents §376 (credentials signed by mere claimant to governorship); 1 Hinds' Precedents §374 (credentials from suspended state government).
14. 2 USC §26 requires credentials which show the Representatives-elect "were regularly elected in accordance with the laws of their states respectively, or the laws of the United States.
15. The most recent debate over the Clerk's action in enrolling a Member-elect occurred on Mar. 9, 1933 (see §3.4, *infra*). See the remarks of Mr. Bertrand H. Snell (N.Y.), on that occasion, opposing the administration of the oath to a Member-elect without credentials, and objecting, post

The term "credentials" actually refers to a very specific document, the certificate of election, certified by the state executive and attesting to the due election of the respective Member-elect.⁽¹⁶⁾ Certificates are transmitted, usually by certified mail, to the Clerk of the House,⁽¹⁷⁾ and may arrive anytime up to the date of the convening of Congress; their failure to arrive before that date will result in the individual's name not appearing on the Clerk's roll.⁽¹⁸⁾ The Clerk

facto, to the Clerk's action in enrolling the Member-elect. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess. Mr. Snell argued that state law, as interpreted by the state supreme court, required the official certificate before the taking of the oath of office. Mr. Snell stated that the Clerks of the House had "always been very particular to see that the certificate which the Clerk accepted before he put the name on the roll was in strict compliance with the law of the state itself" and averred that the Clerk had not exceeded his authority in such a manner for 50 years.

16. See Ch. 8, *infra*, for the elements and form of the certificate, and the issuance thereof by the proper state official.
17. When a paper was received by the House during the call of the roll, addressed to the Speaker, the Clerk presiding declined to open it, although it was supposed to contain a missing credential. 1 Hinds' Precedents §47.
18. Generally, although the House may authorize the taking of seats by

has in the past enrolled a Member-elect whose certificate of election was not yet prepared, when the Governor notified the House that a certificate would be forthcoming.⁽¹⁹⁾

The Clerk is empowered by statute to inquire into the regularity under state law of the credentials when they are delivered.⁽¹⁾ On occasion, the Clerk has enrolled a Member with due credentials on file, although notified of an adverse judicial decision in the state of representation.⁽²⁾

Only one original certificate is transmitted to the Clerk's office (although the Member himself may receive a "ceremonial" copy);

Members-elect whose credentials have not yet arrived, the Clerk may not enroll such Members-elect. See §3.7, *infra*.

19. See §3.4, *infra*. The objection to the Clerk's action by a Member of the House indicated that the Clerk had acted contrary to the prevailing practice. See 73 CONG. REC. 71, 72, 73d Cong. 1st Sess., Mar. 9, 1933.
1. The phrasing of 2 USC §26, requiring credentials showing regular election under state law, contemplates some discretion in reviewing state law. For the Clerk's functions in that respect, see §4, *infra*. In early Congresses, a committee examined the credentials of every Member-elect before authorizing the taking of seats. See 1 Hinds' Precedents §§386–387.
2. See §4.3, *infra*.

the original is retained in the custody of the Clerk's office during and after the period of organization.⁽³⁾ The set of credentials for one Congress is delivered by the Clerk, after a period of four years, to the National Archives, where they are kept as a public record.⁽⁴⁾ (The credentials are filed in the same order in which Members are enrolled, alphabetically by state.)

Although the Clerk will not as a general rule enroll Members-elect who appear without certificates of election, the House itself may authorize the administration of oath to Members-elect who appear with "substitute" credentials, where the original certificate is delayed.⁽⁵⁾

3. Since credentials are transmitted directly from the state executive to the Clerk of the House, it is a misnomer to describe Members-elect as "bearing" or "presenting" their credentials (see, for example, 1 Hinds' Precedents §30—Member-elect as "bearer"). The Clerk's office will accept, however, credentials which are hand-delivered by the Member-elect because of the immediacy of the convening date of Congress.
4. Since the credentials of the Resident Commissioner from Puerto Rico, unlike the certificates of Members and Delegates, extend for four years (see §5.4, *infra*), the entire set of credentials for one Congress is retained by the Clerk's office until the end of the succeeding Congress.
5. For early instances of such action, see 1 Hinds' Precedents §§162–168.

For example, Members-elect have been sworn on the basis of letters and telegrams from the executive department of the state of representation, attesting as to the due election of the Member-elect and stating that regular credentials would be forthcoming.⁽⁶⁾ Such state executive declarations may state, as a basis for authorizing the administration of the oath, the result of official election returns and may request that such communications constitute official notice of election.⁽⁷⁾ (On many occasions, the House authorizes the administration of the oath where credentials have not yet arrived, pursuant to a statement by another Member-elect that the election in issue is neither contested nor questioned.)⁽⁸⁾

The Clerk may receive during the term of a Congress late credentials and credentials of Members-elect to fill unexpired terms; those certificates are laid before

On some occasions, the House has enrolled claimants where the state executive refused to issue any credentials. See 1 Hinds' Precedents §§ 553-564.

6. See §§ 3.1-3.4, *infra*.
7. See, for example, § 3.2, *infra*.
8. Swearing in Members-elect who do not have credentials but whose elections are unquestioned is authorized by unanimous consent. See § 3.5, *infra*.

the House and then filed by the Clerk with the other certificates for that Congress.⁽⁹⁾ Until the certificate is laid before the House, the respective Representative-elect is not entered on the regular roll of the House.⁽¹⁰⁾

The credentials of Delegates-elect and Resident Commissioners are similarly transmitted to the Clerk and filed with the other documents for the same Congress. The main distinction is that the credentials of those officials do not entitle them to be included on the Clerk's roll; the other distinction is that the credentials for the Resident Commissioner extend for four years as opposed to two.⁽¹¹⁾

Evidence of Certificate; Telegrams

§ 3.1 Not having received their certificates of election, the House authorized the administration of the oath to certain Members-elect pursuant to the receipt of a telegram

9. See § 3.6, *infra*.
10. See § 3.7, *infra*. If Members-elect to fill vacancies appear to take the oath following the intervening death of the Speaker, their credentials are not laid before the House and they are not sworn or enrolled until after a new Speaker's election, in which they are not entitled to participate. See § 5.3, *infra*.
11. See § 3.8, *infra*.

from the state Attorney General and Chairman of the state Board of Canvassers.

On Nov. 15, 1937,⁽¹²⁾ the Clerk of the House submitted to the House a telegram from the Honorable John J. Bennett, Jr., Attorney General of New York and Chairman of the state Board of Canvassers, indicating the election of three Representatives to fill vacancies. The telegram indicated that certificates of election issued by the state Board of Canvassers would be forwarded shortly. The House authorized Speaker William B. Bankhead, of Alabama, to administer the oath to the three Representatives-elect.

§ 3.2 The oath was administered, by unanimous consent, to a Delegate-elect whose certificate of election had not arrived, pursuant to a communication from the territorial governor attesting to the election results and requesting that the communication constitute official notice of election.

On Aug. 4, 1954,⁽¹³⁾ the House authorized the Speaker⁽¹⁴⁾ to ad-

12. 82 CONG. REC. 9, 75th Cong. 2d Sess.

13. 100 CONG. REC. 13282, 83d Cong. 2d Sess.

14. Joseph W. Martin, Jr. (Mass.).

minister the oath of office to Mrs. Elizabeth P. Farrington, Delegate-elect of Hawaii, whose certificate of election had not yet arrived. She was administered the oath pursuant to a letter from the Governor of Hawaii stating the election results and requesting that the communication be accepted as notice of her election pending arrival of the official certificate, due to the desirability of having Hawaii represented in the House during the closing days of the session.

§ 3.3 The House authorized, by unanimous consent, the administration of the oath to a Member-elect, whose certificate of election had not arrived, pursuant to a telegram from the Secretary of State stating that the Member-elect was duly elected according to unofficial returns.

On Oct. 30, 1963,⁽¹⁵⁾ the House authorized the administration of the oath to Mr. Mark Andrews, of North Dakota, pursuant to a telegram from Ben Meier, Secretary of State of North Dakota, stating that according to unofficial returns Mr. Andrews had been elected to complete an unexpired term.

§ 3.4 A Member-elect appearing without credentials has

15. 109 CONG. REC. 20612, 88th Cong. 1st Sess.

been enrolled and sworn where the state executive notified the House that although the Member-elect had been duly elected, the preparation of the certificate was delayed by the technicalities of state law.

On Mar. 9, 1933,⁽¹⁶⁾ the Clerk placed on the roll and the House authorized to be sworn in the Member-elect from Maine, Mr. John G. Utterback, who had appeared without a certificate of election. The Governor of Maine had informed the House that Mr. Utterback was duly elected but that a certificate of election would not be forthcoming until the assembly of the executive council, which was required by state law to act with the Governor in the preparation of the certificate.⁽¹⁷⁾

Oath Administration Absent Credentials

§ 3.5 Where certificates of election have not been received,

16. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

17. See the remarks, in opposing the authorization of the administration of the oath to Mr. Utterback, of Mr. Bertrand H. Snell (N.Y.), who argued that the action of the House set a dangerous precedent and violated both state and federal law. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

the House may by unanimous consent authorize the Speaker to administer the oath to Members-elect whose elections are not contested.

On Nov. 15, 1937,⁽¹⁸⁾ the House authorized Speaker William B. Bankhead, of Alabama, by unanimous consent, to administer the oath to three Representatives-elect for whom certificates of election had not yet been received, and whose elections were not contested.

Similarly, on Oct. 3, 1940,⁽¹⁹⁾ the House authorized, by unanimous consent, Speaker Sam Rayburn, of Texas, to administer the oath of office to Member-elect Florence R. Gibbs, of Georgia, notwithstanding the fact that the certificate of election had not yet been received in the Clerk's office.

Also, on June 20, 1941,⁽²⁰⁾ the oath was administered by unanimous consent to Mr. John H. Foulder, of North Carolina, whose certificate of election had not yet been received.⁽¹⁾

18. 82 CONG. REC. 9, 75th Cong. 2d Sess.

19. 86 CONG. REC. 13117, 76th Cong. 3d Sess.

20. 87 CONG. REC. 5398, 77th Cong. 1st Sess.

1. Similar House action has been taken on numerous occasions. See, for example, 109 CONG. REC. 11233 (June

Credentials to Fill Vacancies

§ 3.6 The Clerk of the House informs the House of the receipt of a certificate of election of a Member-elect, elected to fill an unexpired term, whereupon the new Member is sworn in.

On May 21, 1934,⁽²⁾ Speaker Henry T. Rainey, of Illinois, laid before the House the following communication:

Honorable HENRY T. RAINEY,
Speaker of the House of Representatives, Washington, D.C.

DEAR SIR: The certificate of election of Honorable J.Y. Sanders, Jr., has been received, to fill the unexpired term of Honorable Bolivar E. Kemp, of the sixth district of the State of Louisiana.

Very respectfully,
SOUTH TRIMBLE,

Clerk of the House of Representatives.

Mr. Sanders was then presented to the House and administered the oath of office by the Speaker.

§ 3.7 Members-elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a

20, 1963), 14242 (Aug. 6, 1963), 20612 (Oct. 30, 1963), 88th Cong. 1st Sess.; 111 CONG. REC. 13774 (June 16, 1965), 27171 (Oct. 18, 1965), 89th Cong. 1st Sess.

2. 78 CONG. REC. 9151, 73d Cong. 2d Sess.

quorum when the second session convenes; their names are included on the roll only after their certificates of election have been laid before the House and after the oath has been administered to them.

On Jan. 10, 1966, the opening day of the second session,⁽³⁾ after the call of the roll to ascertain the presence of a quorum, the certificates of election of Mr. Clarence J. Brown, Jr., of Ohio, and Mr. Thomas M. Rees, of California, both elected to fill vacancies, were laid before the House. The oath was then administered to them by Speaker pro tempore Carl Albert, of Oklahoma, and their names were then included on subsequent roll calls.

Credentials of Delegates and Resident Commissioners

§ 3.8 At the opening of a Congress, the Clerk informs the House of the receipt of the credentials of Delegates and of the Resident Commissioner from Puerto Rico, whose names are not placed on the Clerk's roll.

On Jan. 3, 1973,⁽⁴⁾ immediately after the call of the Clerk's roll to

3. 112 CONG. REC. 6, 89th Cong. 2d Sess.

4. 119 CONG. REC. 12, 93d Cong. 1st Sess.

establish a quorum, the Clerk announced to the House the receipt of the credentials of: Delegate-elect Walter E. Fauntroy, of the District of Columbia, Delegate-elect Antonio Borja Won Pat, of Guam, Delegate-elect Ron De Lugo, of the Virgin Islands, and Resident Commissioner-elect Jamie Benitez, of Puerto Rico. As the names of Delegates and Resident Commissioners are not called to establish a quorum or to vote for Speaker, their names were not included on the Clerk's roll.

Parliamentarian's Note: The credentials of Delegates expire with the term of the House, but the Resident Commissioner's credentials extend for a four-year term.

§ 3.9 The Clerk informs the House of the receipt of the credentials of the new Resident Commissioner of Puerto Rico to fill a vacancy, whereupon the Commissioner is sworn.

On Jan. 3, 1940,⁽⁵⁾ the Clerk of the House, South Trimble, informed the the House of the receipt of a certificate signed by the Governor of Puerto Rico, showing the appointment of Mr. Bolívar Pagán as Resident Commissioner of Puerto Rico, to fill a vacancy.

Mr. Pagán was then administered the oath of office.

5. 86 CONG. REC. 6, 76th Cong. 3d Sess.

§ 3.10 On one occasion the House was informed of the appointment of the Resident Commissioner of the Philippines by the President of the United States.

On Aug. 18, 1944,⁽⁶⁾ Speaker Sam Rayburn, of Texas, laid before the House a communication from the President of the United States, the Honorable Franklin D. Roosevelt, transmitting a communication from the President of the Philippines advising the President of the appointment of Colonel Carlos P. Romulo, as Resident Commissioner of the Philippines.

Parliamentarian's Note: The Philippine Government was sitting in Washington due to Japanese occupation of the Islands.

§ 4. The Clerk's Roll

The Clerk's roll is the list of Members-elect, arranged alphabetically by states, which the Clerk prepares in advance of the convening of a new Congress based on the certificates of election received by his office.⁽⁷⁾ That

6. 90 CONG. REC. 7102, 78th Cong. 2d Sess.

7. See 2 USC §26, directing the preparation of the Clerk's roll. As to the form of credentials and their transmission to the Clerk's office, see §3, supra.

particular roll is called only once, directly after the Congress convenes, in order to establish a quorum of Representatives-elect to proceed to the organization of the House.⁽⁸⁾ The roll does have a further purpose, in that it constitutes the first official declaration as to which persons claiming seats in the House are entitled to participate in the proceedings prior to election of the Speaker, and in the election itself.⁽⁹⁾

As indicated above,⁽¹⁰⁾ every Member-elect with regular creden-

8. See, generally, Ch. 1, §5, *supra*, for the procedure at organization when the Clerk is presiding. The roll to elect the Speaker is called alphabetically on a roll call vote, with each Member casting his vote by declaring the name of the nominee of his choice. (See Ch. 1, §6, *supra*.) For the relationship between the Clerk's roll and regular rolls of the House, see §4.1, *infra*.
9. As the roll to elect a Speaker is based exclusively upon the Clerk's roll, a claimant to a seat who is not enrolled will not be called on the roll call vote (see §2, *supra*, for the right to participate of Members-elect). For the proposition that claimants not enrolled may not participate in organization until the House takes some action on their claims, see 1 Hinds' Precedents §§83–86. On the other hand, Members-elect enrolled may participate before the House decides that they were enrolled on insufficient evidence (see 1 Hinds' Precedents §366).
10. §3, *supra*.

tials on file with the Clerk has a right to be included on the Clerk's roll;⁽¹¹⁾ whether or not a specific set of credentials shows the person named therein to be regularly elected is a matter solely for the decision of the Clerk,⁽¹²⁾ who is the only official authorized to prepare the Clerk's roll (unless his office is vacant, in which case the Sergeant at Arms, or in his absence, the Doorkeeper, performs the Clerk's functions).⁽¹³⁾

Whether or not the Clerk may go behind the document of creden-

11. In *Page v U.S.*, 127 U.S. 67(1888), the Supreme Court held, *inter alia*, that a Representative-elect whose credentials showed he was regularly elected must have been placed on the Clerk's roll under §31 of the Revised Statutes (now, 2 USC §26).
12. See the provisions of 2 USC §26, which do not specify the required form of credentials, or the factors for determining whether they show the Member-elect was "regularly elected." In early times, a committee examined the credentials with the object of ensuring the regularity (see 1 Hinds' Precedents §§386, 387). Mere enrollment does not entitle a Member-elect to a seat, however, as the House determines both the *prima facie* and final entitlement to that right (see §6, *infra*); the House may review the action of the Clerk in enrolling Members-elect (see, generally, 1 Hinds' Precedents §§589–610).
13. See 2 USC §26. For a recent occasion where the Doorkeeper assumed the Clerk's functions, see §4.2, *infra*.

tials itself to determine whether to enroll a particular Member-elect depends on the specific circumstances of the case. In past Congresses, Members-elect have been enrolled where there was no certificate but there were communicated official statements from state authorities showing election return,⁽¹⁴⁾ or where the credentials were irregular but state law forbade rejection of credentials for mere informalities.⁽¹⁵⁾ On at least one occasion, the Clerk has inquired into the age qualification of a Member-elect who was not yet 25 years old when his credentials were presented, but who reached the age limit after Congress had convened.⁽¹⁶⁾ In contemporary practice, the Clerk will not enroll

a Member-elect unless credentials regular in form and in strict compliance with state law have been received.⁽¹⁷⁾

The Clerk's roll is directed to be read at the opening of a Congress by the Clerk, or by the officer who assumes his functions. The roll is called in the same manner in which it is prepared, alphabetically by state.⁽¹⁸⁾

Occasionally it is necessary to correct the roll, due to technical errors or due to changes in the membership. The roll has been corrected on the floor of the House by reference to credentials, when the roll contained a typographical error;⁽¹⁹⁾ where there are alleged errors in substance, the Clerk's roll will not be corrected until the

14. See 6 Cannon's Precedents §597. For a recent instance of such action, see §4.4, *infra*.

15. See 6 Cannon's Precedents §557.

16. See 1 Hinds' Precedents §418. For a full discussion of the meeting of qualifications before appearing to take the oath, but after the election or even after the convening of Congress, see Ch. 7, *infra*. A line of precedents in both the Senate and House suggest that a Member-elect lacking the age and citizenship requirements of U.S. Const. art. I, §2, clause 2, at the time of election may forestall presenting his credentials and taking the oath until he satisfies those qualifications, after the convening of Congress.

17. Strenuous opposition was voiced in the House on the last occasion when the Clerk enrolled a claimant to a seat whose credentials had not yet been received (see §4.4, *infra*). The Clerk has enrolled a Member-elect despite an order of the state supreme court restraining the issuance of the certificate of election (see §4.3, *infra*). For similar past instances where credentials already delivered to the Clerk took precedence over adverse decisions by the highest court of the representative state, see 1 Hinds' Precedents §§56, 57.

18. See §4.1, *infra*.

19. See 1 Hinds' Precedents §25 (name of state Governor, instead of Member-elect, called by error).

time for the administration of the oath to Member.⁽²⁰⁾ Before the House meets, the Clerk may strike from the roll names of Members-elect whose certificates of election are on file, but who have resigned or who have died before the convening of a Congress.⁽¹⁾ However, such corrections are only made by the Clerk pursuant to official declarations by the executive of the state of representation. For example, in the 93d Congress, the name of a Member-elect whose seat the Governor had declared vacant pursuant to a presumptive death verdict was stricken from the Clerk's roll.⁽²⁾ But the name of a companion Member-

elect, who had disappeared under the same circumstances as the former, was not stricken from the roll, since the state of representation had not declared his seat vacant nor recognized the possibility of presumed death.⁽³⁾

The composition of the Clerk's roll is determinative of those persons entitled to be counted for the initial quorum of the House, and those persons entitled to vote for Speaker at the opening of a new Congress.⁽⁴⁾ In that respect, the regular roll differs substantially from the roll to establish a quorum or to elect a new Speaker at the beginning of a second session.

When the Speaker died between sessions of the 87th Congress, and several Members-elect appeared to fill vacancies at the beginning of the second session, those Members-elect were not called to establish a quorum or to elect a new Speaker, although their certificates of election were on file with the Clerk. They could not be sworn until after the Speaker was elected, and the regular roll of the House includes only those Mem-

20. The Clerk may not entertain motions to "correct" the roll by substituting the name of a claimant for the name of a Member-elect (see 1 Hinds' Precedents §§22-24). Challenges, which attempt to add the name of one person to the roll and to strike the name of another, are not made until the Speaker indicates that the administration of the oath is in order (see §6, *infra*).

1. See §§4.6, 4.8, *infra*. For an exception to that procedure, see §4.7, *infra* (where a Member-elect died moments before Congress convened, his name was not stricken from the roll until the House was informed of the death). The Clerk's power to strike the names of dead and resigned Members-elect is traditional (see 1 Hinds' Precedents §§26-28).

2. See §4.8, *infra*.

3. See §4.9, *infra*. Subsequently, the House itself declared the seat vacant, pursuant to presumptive death evidence, and the Member's-elect name was then stricken from further roll calls.

4. See §2, *supra*.

bers who have qualified for membership by taking the oath.⁽⁵⁾ Therefore, although the Clerk's roll furnishes the preliminary basis for the regular roll of the House, the latter reflects changes in membership occurring after Congress convenes, such as adverse determination of election contests, resignations of Members-elect who decline to take the oath in favor of another office, and deaths.⁽⁶⁾

Form and Call of the Roll

§ 4.1 Unlike regular roll calls of the House, the Clerk's roll

5. See §4.11, *infra*. On the same occasion, resignations of Members received during adjournment were not laid down prior to the vote for Speaker, although their names had been stricken from the roll of the House (see §4.10, *infra*). That practice is to be distinguished from the procedure at the convening of a new Congress, where the Clerk announces before the election of the Speaker the names of those resigned Members-elect whose names have been stricken from the roll. See, *e.g.*, announcement of the Clerk as to a vacancy in the 92d Congress, 117 CONG. REC. 10, Jan. 21, 1971.
6. After organization, the roll of the House consists of those Members chosen, sworn, and living whose membership has not been terminated by resignation or by the action of the House. See 4 Hinds' Precedents §§2889-2890; 6 Cannon's Precedents §638.

to establish a quorum of Representatives-elect at the convening of a new Congress is prepared and called alphabetically by states.

The Clerk's roll at the beginning of the 92d Congress was both prepared and called by state delegations, listed alphabetically.⁽⁷⁾ The roll to establish a quorum has taken that form at the beginning of every Congress.⁽⁸⁾ However, unless the roll is taken by electronic device (see Chs. 20, 30, *infra*) regular roll calls of the House are required to be called alphabetically by surname under House Rule XV.⁽⁹⁾ (After a quorum is established at the opening of a new Congress, the roll to elect a Speaker is called alphabetically, to which the Member responds by calling the surname of the nominee of his choice.)⁽¹⁰⁾

§ 4.2 Where the Clerk has died between Congresses, and in

7. 117 CONG. REC. 9, 10, 92d Cong. 1st Sess., Jan. 21, 1971.
8. In former Congresses, the roll to establish a quorum at the beginning of a new session during the term of a Congress was also called by states (see 1 Hinds' Precedents §83).
9. Rule XV clause 1, *House Rules and Manual* §765 (1973).
10. See, *e.g.*, 117 CONG. REC. 10, 11, 92d Cong. 1st Sess., Jan. 21, 1971. See also 1 Hinds' Precedents §§204-222.

the absence of the Sergeant at Arms, the Doorkeeper of the House directs the call of the roll of Representatives-elect, prepared under his auspices.

On Jan. 3, 1947,⁽¹¹⁾ the opening of the 80th Congress, the Doorkeeper of the House, Ralph R. Roberts, directed the call of the roll to establish a quorum and to elect a Speaker. The Doorkeeper assumed the functions of the Clerk of the House, in preparing the roll and directing the call thereof, pursuant to title 2, United States Code, section 26, appointing the Doorkeeper to perform those duties in the absence of both the Clerk and the Sergeant at Arms.

Clerk's Review of State Law

§ 4.3 A certificate of election in due form having been filed, the Clerk placed the name of the Member-elect on the roll, although he was subsequently advised that the state supreme court had issued a writ restraining the Secretary of State from issuing such certificate.

11. 93 CONG. REC. 33, 34, 80th Cong. 1st Sess.

On Jan. 3, 1949,⁽¹²⁾ Clerk John Andrews, of Massachusetts, made the following announcement:

A certificate of election is on file in the Clerk's office, showing the election of John C. Davies as a Representative-elect to the Eighty-first Congress from the Thirty-fifth Congressional District of the State of New York.

Several communications have been received from the executive deputy secretary of state for the State of New York informing the Clerk that a case is pending before the supreme court, Albany County, N.Y., and that the said secretary of state is restrained from certifying the election of a Representative from this congressional district. However, in view of the fact that a certificate of election in due form has been filed with the Clerk by John C. Davies, the Clerk has therefore placed his name on the roll. ⁽¹³⁾

§ 4.4 The House may authorize the Speaker to administer the oath of office to a Member-elect who appears with-

12. 9.5 CONG. REC. 8. 81st Cong. 1st Sess.

13. Under New York law, although Congress is the final judge of the qualifications of its own Members, until the certificate of election has been transmitted to and acted upon by Congress, New York state courts are open to a candidate who alleges that the certificate is being issued in violation of the law. *People ex rel. Brown v Board of Suprs. of Suffolk County*, 216 N.Y. 732, 110 N.E. 776 (1915) (mem.).

out credentials but whose name has been placed upon the roll of Members-elect by the Clerk, pursuant to a communication from the state Governor.

On Mar. 9, 1933,⁽¹⁴⁾ the House adopted a resolution authorizing the administration of the oath of office to Mr. John G. Utterback, of Maine, who reported on opening day without a signed certificate of election from the Governor of the State of Maine. The Clerk had placed the name of Mr. Utterback upon the Clerk's roll pursuant to a letter from the Governor of Maine stating that although the Member-elect apparently received a majority of the votes cast in the district the Governor was without authority to issue credentials due to the terms of a state law which required the concurrent action of the Governor and executive counsel before an election certificate could be issued.⁽¹⁵⁾

Adding New States to Roll

§ 4.5 The Clerk announced receipt of the proclamation of

14. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

15. See the remarks, in opposing the enrolling of and the administration of the oath to the Member-elect without credentials, of Mr. Bertrand Snell (N.Y.), arguing that the action of the House and of the Clerk set a dangerous precedent. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

statehood for a new state during the call of the Clerk's roll, and directed that the new state be called.

On Jan. 7, 1959,⁽¹⁶⁾ after the commencement of the call of the Clerk's roll on opening day, and after the call of the names of Members-elect from Alabama, the Clerk made the following announcement:

A certified copy of the Presidential proclamation indicating that the Territory of Alaska has qualified as a State pursuant to provisions of law has been received.

The clerk will proceed.

The Representative-elect from Alaska was then called.

Correcting the Roll for Deaths

§ 4.6 At the opening of a Congress the Clerk informs the House of vacancies in the Clerk's roll, occasioned by the death of Members-elect.

On Jan. 3, 1973,⁽¹⁷⁾ the opening day of the 93d Congress, the Clerk announced after the call of the Clerk's roll, which did not include the name of Member-elect George W. Collins, that the death of that Member-elect created a va-

16. 105 CONG. REC. 11, 86th Cong. 1st Sess.

17. 119 CONG. REC. 12, 93d Cong. 1st Sess.

cancy in the state delegation of Illinois.

§ 4.7 On an exceptional occasion, where a Representative-elect whose certificate of election was on file with the Clerk died moments before the House convened, his name was included on the Clerk's roll until the House was informed of his death after assembly.

On Jan. 10, 1967,⁽¹⁸⁾ the opening day of the 90th Congress, the name of Member-elect John E. Fogarty, of Rhode Island, was included on the Clerk's roll to establish a quorum, although Mr. Fogarty had died in his office shortly before the House was to convene. His name was not stricken from the roll of the House until the Clerk informed the House of his death, shortly after the call of the roll.

§ 4.8 The Clerk of the House omitted from the roll at the beginning of the 93d Congress the name of a Representative-elect, pursuant to the receipt of judicial certification of presumptive death, and of the state executive's declaration of vacancy.

18. 113 CONG. REC. 11, 12, 90th Cong. 1st Sess.

On Jan. 3, 1973,⁽¹⁹⁾ the opening day of the 93d Congress, the Clerk of the preceding House, W. Pat Jennings, directed the call of the Clerk's roll to establish a quorum. The reading clerk announced that the delegation of the State of Alaska was vacant. The name of Mr. Nick Begich, Representative-elect at large from that state, had been omitted from the Clerk's roll pursuant to the receipt by the Clerk of a certified copy of the certificate of presumptive death of Mr. Begich. The Clerk also informed the House, after the election of the Speaker, that the Governor of Alaska had declared the seat of Mr. Begich vacant.

§ 4.9 Where the state of representation did not certify, either through its judiciary or through its executive, the presumptive death of a Representative-elect, his name was placed on the Clerk's roll and not stricken from the roll of the House until the House determined the seat to be vacant.

On Jan. 3, 1973,⁽²⁰⁾ the opening day of the 93d Congress, Clerk of

19. 119 CONG. REC. 11 et seq., 93d Cong. 1st Sess.

20. 119 CONG. REC. 15, 93d Cong. 1st Sess.

the House W. Pat Jennings informed the House that he had placed upon the roll of Representatives-elect the name of Mr. Hale Boggs, of Louisiana, pursuant to the receipt of his certificate of election. The Clerk had, however, omitted from the roll the name of Mr. Nick Begich, of Alaska, who had been missing since Oct. 16, 1972, the date of the disappearance of an airplane on which Mr. Boggs had also been a passenger. Mr. Begich's name had been omitted from the roll pursuant to the receipt by the Clerk of a presumptive death certificate from the State of Alaska and pursuant to a telegram from the Governor of that state notifying the House that he had declared Mr. Begich's seat vacant. In Mr. Boggs' case, however, the Clerk had received certification from the State of Louisiana stating that no state court actions had been instituted to change Mr. Boggs' status or to affect the validity of his certificate of election, and stating that the Governor himself had taken no action to affect Mr. Boggs' status as a Representative-elect. Therefore Mr. Boggs' name had been placed on the roll and called to establish a quorum.

The House subsequently adopted a resolution determining Mr. Boggs' seat to be vacant, based on

documentary evidence and on the official certification by the State of Alaska of Mr. Begich's presumptive death. The name of Mr. Boggs was stricken from subsequent roll calls.

The resolution adopted by the House read as follows:

H. RES. 1

Whereas a certificate of election has been received by the Clerk of this House showing the election of Hale Boggs as a Representative in the Ninety-third Congress from the Second Congressional District in the State of Louisiana; and

Whereas Representative-elect Hale Boggs has not appeared to take the oath of office as a Member of this House; and

Whereas the Clerk of the House of Representatives, acting at the direction of the Speaker of this House for the Ninety-second Congress, has ascertained that Representatives Nick Begich and Hale Boggs, Members of the Ninety-second Congress, together with Russell L. Brown and Don E. Jonz of the State of Alaska, all of whom departed together by plane from Anchorage, Alaska, on October 16, 1972, on a flight bound for Juneau, Alaska, have been missing since that date and despite repeated and thorough searches have not been located; and

Whereas the District Court for the State of Alaska, Third Judicial District, after hearing witnesses and studying all available evidence relative to the disappearance of Representative Begich, Russell L. Brown and Don E.

Jonz, has determined that these three men cannot be found alive after such a lapse of time and are presumed dead; and

Whereas as a result of the findings of the jury in the aforementioned judicial proceeding the judge of the said court has signed certificates of presumptive death with respect to Representative Begich, Russell L. Brown and Don E. Jonz; and

Whereas no evidence has been presented to this House or is known to it which distinguishes the missing status of Representative-elect Hale Boggs from that of the three men for whom the aforementioned certificates of presumptive death have been issued; Therefore be it

Resolved, That based on information provided by its Clerk, this House of Representatives hereby determines that there is a vacancy in the Ninety-third Congress in the representation from the Second Congressional District in the State of Louisiana because of the absence of Representative-elect Hale Boggs.

Resolved, That the Speaker of the House is hereby directed to notify the Governor of the State of Louisiana of the existence of this vacancy so that appropriate measures to fill this vacancy may be undertaken by the Governor pursuant to Article I, Section 2 of the Constitution of the United States.

Resolved, That the Speaker be authorized to appoint a delegation of Members of this House, together with such Members of the Senate as may be joined, to attend memorial services to be held for the former Majority Leader in New Orleans, Louisiana, on January 4, 1973.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary to carry out the provisions of these resolutions and that the necessary expenses in connection therewith, as well as any incurred by the Clerk at the Speaker's request, be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate, to the Governor of the State of Louisiana, and transmit a copy to the family of the missing Representative-elect Hale Boggs.

Roll to Begin Session

§ 4.10 Election of a new Speaker being the first order of business, resignations of Members received during the *sine die* adjournment after the first session were not laid down prior to the vote, but their names had been stricken from the roll and were not called to establish a quorum or to elect a Speaker at the opening of the second session.⁽¹⁾

1. This practice is distinguished from the procedure at the opening of a new Congress, where the Clerk announces vacancies immediately after the call of the Clerk's roll (which does not include the names of resigned Members) but before the election of a Speaker. See, *e.g.*, announcement of the Clerk as to a vacancy in the 92d Congress, 117 CONG. REC. 10, January 21, 1971.

On Jan. 10, 1962,⁽²⁾ the opening day of the second session, following the death of Speaker Sam Rayburn, of Texas, during the *sine die* adjournment, Clerk of the House Ralph R. Roberts called the roll to establish a quorum and proceeded immediately to the election of a Speaker. The names of Mr. Frank Ikard, of Texas, and Mr. Lester Holtzman, of New York, who had submitted their resignations during the *sine die* adjournment, were not included on the roll to establish the quorum or to elect a Speaker. Their resignations were not announced until after the election.

§ 4.11 Where the Speaker had died between sessions of the 87th Congress and a new Speaker was elected immediately after the second session had convened, Members-elect to fill vacancies with credentials on file were not called to establish the quorum or to elect a Speaker.⁽³⁾

2. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.

3. The procedure followed in this instance differs from the practice at the opening of a new Congress, where all Members-elect with regular credentials are called to establish a quorum and to vote for a Speaker (see detailed discussion at §4, supra).

On Jan. 10, 1962,⁽⁴⁾ the opening day of the second session, Mr. Henry B. Gonzalez, of Texas, Mr. Joe Waggoner, Jr., of Louisiana, and Mr. Lucien N. Nedzi, of Michigan, all Representatives-elect to fill vacancies, were not sworn in until after the election of Speaker John W. McCormack, of Massachusetts. Their names were not placed on the roll to establish a quorum or to elect a Speaker.

§ 5. Administering the Oath

The Constitution requires, at article 6, clause 3, that every Senator and every Representative swear or affirm to uphold the Constitution of the United States. Since neither the form, nor the procedure of administration, nor the time of administration of the oath of office are specified by constitutional provisions, they are all regulated by statute. The form of the oath taken by Members-elect (the same oath taken by the Speaker and officers of the House)⁽⁵⁾ has undergone revision

4. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.

5. 2 USC §26 requires the oath of the Speaker and Clerk as well as of Members. The form of the oath prescribed for an individual elected or appointed to an office in the civil

since the first Congress,⁽⁶⁾ and now reads as followings:

service or uniformed service appears at 5 USC §3331. If a new Speaker is elected after the organization of the House, and after he has taken the oath of office as a Member, he nevertheless must be administered the oath again as Speaker. See 1 Hinds' Precedents §225.

6. The first oath of office was worded, by the Act of June 1, 1789, Ch. 1, 1 Stat. 23, as follows: "I, A. B., do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States." National sentiment in the wake of the Civil War lead to a new oath, under the Act of July 2, 1862, Ch. 128, 12 Stat. 502, which disqualified for a congressional seat any person with a past record of disloyalty to the United States (disloyalty was exhaustively defined within the wording of that oath). Pursuant to the ratification of the Fourteenth Amendment (whose clause 3 disqualified, among others, past supporters of the Confederate cause, with a provision for removal of such disqualification), Congress provided in the Act of July 11, 1868, Ch. 129, 15 Stat. 85, for a specific oath to be taken by those who "participated in the late rebellion" but whose disability for membership in Congress had been removed by an act of Congress. The 1868 act contained the form of the oath that is used today. Finally, the Act of May 13, 1884, Ch. 46, 23 Stat. 22, repealed all of the lengthy and disqualifying 1862 oath and provided for the 1868 oath to be thenceforth applicable to all officers

I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Since appearing to be sworn is a mandatory step to bestow full membership on persons elected to Congress, there has been some debate on whether the requirement can be construed as a "qualification" for membership, with Congress determining whether that qualification has been met.⁽⁷⁾ But

of the United States government save the President. Further minor revisions, now incorporated in 5 USC §3331, were added by the Act of Sept. 6, 1966, Pub. L. 89-554, 80 Stat. 424.

7. See Ch. 7, *infra*, wherein is discussed the limits on the power of the House to exclude a Member-elect for disloyalty.

For a recent general statement on the oath as bestowing membership, see §2.1, *supra*. As to the responsibility of governmental officials who have omitted to take the required oath, one federal court stated that where such an official has been elected or appointed and has discharged his duties, he would be estopped to deny his right to the office if prosecuted for an offense committed in the discharge of duties. "[I]t is not

no precedents grant to the taking of the oath the status of a constitutional qualification whereby the House becomes the judge of the willingness and sincerity of the Member taking it. The United States Code (2 USC) §25) provides that the oath be administered to the Speaker, and by him to the Members and Delegates present and to the Clerk, "previous to entering on any other business. . . ." Although that statute has been considered directory and not mandatory as to the general sequence of events at organization,⁽⁸⁾ the oath is always administered first to the Speaker (immediately after his election) and then to the Members-elect.⁽⁹⁾

probable that a failure to take the oath would affect the acts of one who is by the [United States] Senate actually admitted to a seat therein, and who actually exercises the functions of that office, or that it would constitute any defense to a prosecution for a criminal offense . . . committed during his incumbency of the office." *U.S. v Dietrich*, 126 F 676, 681, 682 (C.C. Neb. 1904) (dicta). In some Congresses, Members have taken seats and discharged their functions without taking the oath for months afterwards; see, for example, 1 Hinds' Precedents §185. In current practice, Members-elect take the oath as soon as they appear. See §§5.13–5.16, *infra*.

8. See Ch. 1, §7, *supra*, for the traditional sequence of events based on the statutory language.
9. See Ch. 1, §7.1, *supra*.

In contemporary practice, the Members are sworn in all at one time, after the Speaker directs them to rise for that purpose.⁽¹⁰⁾ If a challenge is to be made to the right of a Member-elect to be sworn, it is made after the Speaker directs the Members (and the Delegates and the Resident Commissioner)⁽¹¹⁾ to rise to take the oath.⁽¹²⁾ Where Members-elect are absent on opening day, the House may authorize the Speaker himself or a deputy to be appointed by him to administer the oath to such absentees away from the House.⁽¹³⁾ After the Speaker, or the deputy appointed by him,⁽¹⁴⁾

10. See §5.1, *infra*, for the modern practice and for a discussion of the former method of administering the oath by states.
11. Since the Resident Commissioner is elected for a four-year term, as opposed to Members and Delegates, he rises to take the oath only at the beginning of that term, and not at the convening of the second Congress for which elected. See §5.4, *infra*.
12. See §6.1, *infra*.
13. See §§5.8, 5.9, 5.11, *infra*. Although the statute directing the administration of the oath to Members-elect only designates the Speaker as the proper official, the House has decided that it has constitutional power to authorize a "Deputy" to administer the oath as well as to perform other functions of the Speaker. See 1 Hinds' Precedents §170.
14. While the Speaker has discretion to select a deputy, by custom a Member

informs the House that the oath has been administered in absentia,⁽¹⁵⁾ the House adopts a resolution accepting the administration of the oath to the missing Member-elect.⁽¹⁶⁾ On occasion, the Speaker pro tempore may be authorized by the House to administer the oath when the Speaker is absent,⁽¹⁷⁾ but this procedure is rarely followed because of the explicit statutory directive to the Speaker.⁽¹⁸⁾ Where the Speaker's office becomes vacant during a Congress, the oath cannot be administered to Members-elect until after a new Speaker is elected.⁽¹⁹⁾

On occasion, it is necessary to administer the oath individually to Members who are not present for the en masse swearing in ceremony; by statute, such Members-elect may not take their seats until they are sworn.⁽²⁰⁾ The ad-

of the House is appointed, unless inexpedient, in which case an official authorized to administer oaths is appointed. 1 Hinds' Precedents §§ 14-16. See § 5.11, *infra* (state supreme court justice appointed).

15. See §§ 5.8, 5.10, 5.12, *infra*.

16. See §§ 5.8, 5.10, 5.12, *infra*.

17. See § 5.2, *infra*.

18. Only on rare occasions has the oath been administered to Members-elect, in the Speaker's absence, by a Speaker pro tempore (see § 5.2, *infra* and 6 Cannon's Precedents § 20).

19. See § 5.3, *infra*.

20. 2 USC § 25. For the procedure of administering the oath to detained

administration of the oath to individual Members is a privileged matter, and takes precedence over other business.⁽¹⁾ Administering the oath is in order after the previous question is ordered on a pending question,⁽²⁾ during debate on a resolution,⁽³⁾ and on a day when no other business is permitted.⁽⁴⁾

In some instances, the House authorizes the administration of the oath by resolution, as where the right to be sworn has been challenged or where no credentials have been received for the Member-elect. Some such resolutions have included provisions collateral to the actual administration of the oath, such as condi-

Members-elect, see §§ 5.13, 5.14, *infra*.

1. See *House Rules and Manual* § 233 (comment) (1973). The right of Members-elect to seats and questions incidental thereto, including oath administration, are raised under the privilege of the House itself and not as a matter of personal privilege. See *Cannon's Procedure in the House of Representatives*, H. DOC. NO. 122, p. 284, 86th Cong. 1st Sess. (1959).

The administration of the oath takes precedence over even the privileged motion to adjourn (see 1 Hinds' Precedents § 622).

2. See § 5.17, *infra*.

3. See § 5.18, *infra*.

4. See § 5.19, *infra* (adjournment out of respect to deceased Member).

tions of punishment⁽⁵⁾ or conditions that the final right to the seat be referred to committee.⁽⁶⁾

In former times, there existed no documentary evidence of the fact that the oath had been administered to an individual Member-elect. A Member-elect might state that he had taken the oath, and his declaration would be the sole evidence thereof.⁽⁷⁾ To remedy that situation, Congress has by law provided for official copies of the oath of office taken by a Member-elect, to be accorded conclusive evidentiary weight, and required that a record of all those subscribing to the oath be printed in both the Journal and in the *Congressional Record*.⁽⁸⁾ The sin-

gle aim of the enactment was to “provide a way by which any Member of the House could establish by record evidence the fact that he took the oath of office and so became a Member.”⁽⁹⁾

The only persons entitled to be administered the oath on opening day are those whose names appear on the Clerk’s roll, with the exclusion of those whose right to take the oath is challenged;⁽¹⁰⁾ as stated above, the House may add the names of those Members whose credentials have not appeared but about whose election there is no contest or question.⁽¹¹⁾ Members-elect entitled to take the oath may, however, decline or refuse to do so, by resigning before taking a seat in the House,⁽¹²⁾ since membership in (Congress

5. See §5.7, *infra*.

6. For resolutions relating to challenges and the right to seats, see §6, *infra*.

7. See, for example, the confusing situation created at the beginning of the 79th Congress, when several Members who were absent for the calling of the Clerk’s roll were present for the swearing in ceremonies (§5.20, *infra*). An early oath provision, the Act of July 2, 1862, Ch. 128, 12 Stat. 502, required a signed oath to be preserved in the House files, but the practice was seldom followed (see 1 Hinds’ Precedents §128). Currently, 5 USC §2906, enacted in 1966, specifically requires such preservation by the House.

8. For the form in which the oath administration is recorded in the Jour-

nal and in the Record, see §5.21, *infra*. The authorizing provision which Congress enacted in 1948 (Act of Feb. 18, 1948, Ch. 53, 62 Stat. 20) appears as the second paragraph of 2 USC §25.

9. 2 U.S. Code Cong. Serv. p. 1048 (1948).

10. The oath is administered to “Members and Delegates present” previous to their taking their seats. 2 USC §25. U.S. Const. art. VI, clause 3 requires the taking of the oath by “Representatives before mentioned.”

11. See §3.5, *infra*.

12. See 1 Hinds’ Precedents §§1230–35 for past instances of declination to take the oath by resignation.

cannot be imposed on one without his consent.⁽¹³⁾ A Member-elect may be permitted to defer his taking of the oath, without declining his seat, until such time that he meets qualifications not theretofore met.⁽¹⁴⁾ However, the House may determine a Member's seat vacant if he is not qualified at the time of convening.⁽¹⁵⁾

A few notable distinctions may be drawn between the administration of the oath of office in the House and in the Senate. Under Senate practice, Senators-elect are sworn in four at a time, in alphabetical order and not by state.⁽¹⁶⁾ And the Senate rarely authorizes the administration of the oath to an absent Senator-elect away from the Chamber.⁽¹⁷⁾ In addition, there is no provision according evidentiary weight to certified copies of the oath of office taken by Senators-elect, nor is there any

statutory provision directing the sequence of the administration of the oath in relation to other business. The United States Code merely provides that the oath of office shall be administered by the President of the Senate to each Senator-elect, previous to his taking his seat.⁽¹⁸⁾

Administering Officer; Time of Administration

§ 5.1 In contemporary practice, immediately following the election of the Speaker of a new Congress, he swears in Members-elect all at one time.

On Jan. 5, 1937, the opening day of the 75th Congress,⁽¹⁾ after the election of Speaker William B. Bankhead, of Alabama, he made the following announcement:

Some years ago a precedent which had theretofore existed of having the oath administered to Members by States was discontinued and a precedent set whereby all Members took the oath of office at one and the same time. In order to avoid confusion the Chair thinks it best to follow the latter precedent, and the Chair asks each Member of the House and each Delegate to rise in his place while the Chair administers the oath of office.

13. See *U.S. v Dietrich*, 126 F 676, 681 (C. C. Neb. 1904), holding, inter alia, that a person elected a U.S. Senator is not a "Member of Congress" until he has been accepted by the Senate as a Member and until he has voluntarily assumed the duties of his office, including the taking of the oath.

14. See § 2.5, supra.

15. See 1 Hinds' Precedents § 500.

16. See § 5.23, infra.

17. See § 5.24, infra, for instances wherein the Secretary of the Senate was authorized to administer the oath to a Senator-elect in his home state.

18. 2 USC § 21.

1. 81 CONG. REC. 12, 75th Cong. 1st Sess.

The practice preferred by Speaker Bankhead has been followed from the 71st Congress to the present.⁽²⁾

§ 5.2 The House has authorized, by unanimous consent, the Speaker pro tempore to administer the oath of office to a Member-elect in the absence of the Speaker.

On Mar. 12, 1940,⁽³⁾ the House authorized Speaker pro tempore Sam Rayburn, of Texas, who had been appointed for three legislative days by Speaker Bankhead on Mar. 11, to administer the oath of office to Mr. Robert K. Goodwin, of Iowa, in the absence of the Speaker, after the receipt of a certificate of election of Mr. Goodwin.⁽⁴⁾

2. *House Rules and Manual* § 230 (comment to U.S. Const. art. VI, clause 3) (1973) The "latter precedent" referred to, beginning the prevailing practice of swearing in Members and Delegates all at one time, occurred on Apr. 15, 1929, as an innovation by Speaker Nicholas Longworth (Ohio). 71 CONG. REC. 25, 71st Cong. 1st Sess. (paraphrased at 6 Cannon's Precedents § 8).
3. 86 CONG. REC. 2724, 76th Cong. 3d Sess.
4. Apparently on only one other occasion has the oath been administered to an individual Member-elect in the absence of the Speaker by consent of the House (see 6 Cannon's Precedents § 20).

§ 5.3 Where the Speaker dies during the term of a Congress, the oath cannot be administered to Members-elect to fill vacancies until after a new Speaker is elected.

On Jan. 10, 1962,⁽⁵⁾ the House convened for the second session after the Speaker, Sam Rayburn, of Texas, had died during the adjournment *sine die*. The House immediately proceeded to the election of Speaker John W. McCormack, of Massachusetts, who then administered the oath of office to several Representatives-elect to fill vacancies. The Members-elect had not been included on the roll to establish a quorum or to elect a Speaker.⁽⁶⁾

Administration to Resident Commissioner

§ 5.4 A Resident Commissioner elected to the House for a four year term takes the oath of office only once, at the beginning of his term of office.

On Jan. 21, 1971,⁽⁷⁾ the opening day of the 92d Congress, the Resi-

5. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.
6. Where there exists a vacancy in the Speaker's office, there is no official authorized to administer the oath to Members-elect. See 2 USC § 25 and 1 Hinds' Precedents § 170.
7. 117 CONG. REC. 13, 92d Cong. 1st Sess.

dent Commissioner from Puerto Rico, Mr. Jorge L. Cordova, did not arise to take the oath of office en masse with the Members-elect, as he had taken the oath at the beginning of his four-year term, with the commencement of the 91st Congress.⁽⁸⁾

Resolutions Authorizing Oath Administration

§ 5.5 When a Member offers a resolution authorizing the Speaker to administer the oath to a challenged Member before the adoption of the rules, no amendments are in order unless the Member in control yields for that purpose or the previous question is rejected.

On Jan. 4, 1965,⁽⁹⁾ Mr. Carl Albert, of Oklahoma, offered the following resolution:

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from New York, Mr. Richard L. Ottinger.

In response to two parliamentary inquiries by Mr. James C. Cleveland, of New Hampshire, Speaker John W. McCormack, of

8. 115 CONG. REC. 15, 91st Cong. 1st Sess.

9. 111 CONG. REC. 20, 89th Cong. 1st Sess.

Massachusetts, ruled: the pending resolution was not subject to amendment unless Mr. Albert yielded for that purpose; and unless Mr. Albert yielded there would be no opportunity to discuss the merits of the case prior to the vote on the resolution.

The previous question was ordered and the resolution was agreed to. Immediately after adoption of the resolution, the challenged Member appeared at the bar of the House and took the oath of office.⁽¹⁰⁾

§ 5.6 An amendment providing for conditions of punishment is not germane to a resolution authorizing the administration of the oath of office to a Member-elect.

On Jan. 3, 1969,⁽¹¹⁾ Speaker John W. McCormack, of Massachusetts, ruled not germane, to a resolution providing that the Speaker administer the oath of of-

10. Under general parliamentary law, employed by the House before the adoption of rules (applicable in this instance), the 40 minutes debate permitted under Rule XXVII clause 3 [*House Rules and Manual* §907 (1971)] after the ordering of the previous question on a debatable proposition is not in order. See Ch.1 §9, supra.

11. 115 CONG. REC. 23-25, 91st Cong. 1st Sess.

office to Mr. Adam Clayton Powell, Jr., of New York, an amendment adding several conditions of punishment predicated on acts committed in a prior Congress.

§ 5.7 On one occasion, a Representative-elect was administered the oath of office pursuant to a resolution authorizing the administration of the oath, but providing for a fine to be deducted on a monthly basis, reducing seniority to that of a new Member, and specifying that the Representative-elect must take the oath by a certain date or his seat would be declared vacant.

On Jan. 3, 1969, Representative-elect Adam Clayton Powell, Jr., of New York, appeared in the well and was administered the oath of office as a Member of the 91st Congress,⁽²⁾ subsequent to the adoption by the House of a resolution authorizing such administration of the oath, but including other provisions as follows:

H. RES. 2

Resolved—

(1) That the Speaker administer the oath of office to the said Adam Clayton Powell, Member-elect from the Eight-

12. 115 CONG. REC. 33, 34, 91st Cong. 1st Sess.

eenth District of the State of New York.

(2) That as punishment Adam Clayton Powell be and he hereby is fined the sum of \$25,000, said sum to be paid to the Clerk to be disposed of by him according to law. The Sergeant-at-Arms of the House is directed to deduct \$1,150 per month from the salary otherwise due the said Adam Clayton Powell, and pay the same to said clerk until said \$25,000 fine is fully paid.

(3) That as further punishment the seniority of the said Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 91st Congress.

(4) That if the said Adam Clayton Powell does not present himself to take the oath of office on or before January 15, 1969, the seat of the Eighteenth District of the State of New York shall be deemed vacant and the Speaker shall notify the Governor of the State of New York of the existing vacancy.

Administration to Absentees

§ 5.8 The Speaker informs the House of the fact that he has administered the oath of office to an absent Member-elect pursuant to an order of the House, whereupon a resolution is offered accepting such oath.

On Mar. 13, 1933,⁽¹³⁾ Speaker Henry T. Rainey, of Illinois, informed the House that he had ad-

13. 77 CONG. REC. 283, 73d Cong. 1st Sess.

ministered the oath of office to absent Member-elect Wilburn Cartwright, of Oklahoma, as authorized by House Resolution 36. The House then adopted the following resolution:

Whereas Wilburn Cartwright, a Representative from the State of Oklahoma, has been unable from sickness to appear in person to be sworn as a Member of this House, but has sworn to and subscribed the oath of office before the Speaker, authorized by resolution of this House to administer the oath, and the said oath of office has been presented in his behalf to the House, and there being no contest or question as to his election: Therefore

Resolved, That the said oath be accepted and received by the House as the oath of office of the said Wilburn Cartwright as a Member of this House.

Administration by Deputies

§ 5.9 When authorized by resolution to designate deputies to administer the oath of office to absent Members-elect, the Speaker usually appoints as deputies Members of the House from the home states of the absentees.

On Jan. 8, 1937,⁽¹⁴⁾ Speaker William B. Bankhead, of Ala-

14. 81 CONG. REC. 133, 75th Cong. 1st Sess.

bama, announced that pursuant to authorizing resolutions, he had appointed Mr. Schuyler O. Bland, of Virginia, to administer the oath of office to Mr. Andrew J. Montague, of Virginia, Mr. William J. Driver, of Arkansas, to administer the oath of office to Mr. William B. Cravens, of Arkansas, and Mr. Clarence F. Lea, of California, to administer the oath of office to Mr. Henry E. Stubbs, of California.

§ 5.10 A Member designated by the Speaker to administer the oath of office to an absent Member-elect informs the House when he has performed that duty and offers a resolution accepting the oath.

On Jan. 20, 1943,⁽¹⁵⁾ Mr. Edward J. Hart, of New Jersey, made the following report to the House:

Mr. Speaker,⁽¹⁶⁾ in accordance with your designation of me, pursuant to House Resolution 45, Seventy-eighth Congress, adopted by the House of Representatives, to administer the oath of office to Representative-elect Mary T. Norton, of the Thirteenth District of New Jersey, I have the honor to report that on the 16th day of January 1943, at Jersey City, N.J., I adminis-

15. 89 CONG. REC. 245, 246, 78th Cong. 1st Sess.

16. Speaker Sam Rayburn (Tex.).

tered the oath of office to Mrs. Norton, form prescribed by section 1757 of the Revised Statutes of the United States, being the form of oath administered to Members of the House of Representatives, to which Mrs. Norton subscribed.

Mr. Hart then offered a resolution providing that the House accept the oath so administered to the absent Member-elect.

§ 5.11 The Speaker may designate officers of the state judiciary to administer the oath to absent Members-elect.

On Jan. 7, 1959,⁽¹⁷⁾ the Clerk read the following statement of Speaker Sam Rayburn, of Texas:

Pursuant to the authority of House Resolution 11, 86th Congress, the Chair appoints the Honorable Donald Stephen Taylor, Justice of the Supreme Court of New York, Troy, N.Y., to administer the oath of office to the Honorable Dean P. Taylor.

§ 5.12 A non-Member named by the Speaker to administer the oath of office to an absent Member-elect informs the House when he has performed that duty, whereupon the House adopts a resolution receiving and accepting such oath.

On Mar. 21, 1933,⁽¹⁸⁾ there was laid before the House a commu-

17. 105 CONG. REC. 16, 86th Cong. 1st Sess.

18. 77 CONG. REC. 660, 73d Cong. 1st Sess.

nication from Judge Blanton Fortson, of the Western Judicial Circuit, Athens, Georgia, informing the House that he had administered the oath of office to Mr. Charles H. Brand, of Georgia, in Athens, Georgia, pursuant to House Resolution 37 and pursuant to the designation by Speaker Henry T. Rainey, of Illinois, of Judge Fortson to administer the oath to the absent Member-elect. The House then adopted the following resolution:

Whereas Charles H. Brand, a Representative from the State of Georgia, from the tenth district thereof, has been unable from sickness to appear in person to be sworn as a Member of this House, but has sworn to and subscribed the oath of office before Judge Blanton Fortson, authorized by resolution of this House to administer the oath, and the said oath of office has been presented in his behalf to the House, and there being no contest or question as to his election: Therefore

Resolved, That the said oath be accepted and received by the House as the oath of office of the said Charles H. Brand as a Member of this House.

Administration to Delayed Members

§ 5.13 Members arriving too late on opening day to take the oath en masse are administered the oath as they appear at the bar of the House for that purpose.

On Jan. 3, 1945,⁽¹⁹⁾ Speaker Sam Rayburn, of Texas, made the following statement, on opening day, in relation to detained Members:

The Members who have not taken the oath of office will present themselves in the well of the House and all others will clear the well of the House.

§ 5.14 Members-elect who appear subsequent to the day other Members-elect are sworn in present themselves in the well of the House and the Speaker administers the oath to them.

On Jan. 13, 1953,⁽²⁰⁾ ten days after the opening of the 83d Congress, two House Members-elect who had not yet taken the oath of office presented themselves in the well of the House and were administered the oath.

§ 5.15 When a term of a Member began on Jan. 3, 1943, he did not receive the oath of office until Sept. 14, 1943, due to illness.

On Sept. 14, 1943,⁽¹⁾ Speaker Sam Rayburn, of Texas, administered the oath of office to Rep-

19. 91 CONG. REC. 14, 79th Cong. 1st Sess.

20. 99 CONG. REC. 368, 83d Cong. 1st Sess.

1. 89 CONG. REC. 7549, 78th Cong. 1st Sess.

representative-elect Lawrence Lewis, of Colorado, whose term of office commenced with the beginning of the 78th Congress on Jan. 3, 1943. Mr. Lewis was absent due to illness.

§ 5.16 A Member announced, for the information of constituents, that an absent Member-elect would be delayed in taking the oath because of his duties as a naval officer overseas.

On Jan. 4, 1945,⁽²⁾ Mr. John Taber, of New York, made the following announcement:

Mr. Speaker,⁽³⁾ Henry J. Latham was elected to Congress from the Third District of New York last November. He is a lieutenant in the Navy, and was at that time, and is now, on duty in the far Pacific. He will not be able to return to this country to be sworn in until the month of February. I feel, in justice to his constituents, that I should make this announcement at this time.

Privilege of Oath Administration

§ 5.17 Administration of the oath of office to a Member-elect is a matter of high privilege and is in order after the previous question is

2. 91 CONG. REC. 34, 79th Cong. 1st Sess.

3. Speaker Sam Rayburn (Tex.).

ordered on a pending question.

On Oct. 3, 1969,⁽⁴⁾ after the previous question had been ordered on a bill reported from the Committee of the Whole, Mr. Carl Albert, of Oklahoma, asked that a Member-elect be permitted to take the oath of office at that time. The request was granted, and Speaker John W. McCormack, of Massachusetts, administered the oath to Mr. Michael J. Harrington, Representative-elect from Massachusetts to fill a vacancy. Since Mr. Harrington's certificate of election had not yet arrived, the administration of the oath was authorized by unanimous consent.

§ 5.18 On one occasion, debate on a resolution reported from the Committee on Rules was interrupted to allow a new Member to take the oath of office.

On Dec. 24, 1963,⁽⁵⁾ debate on a privileged resolution reported from the Committee on Rules and making in order a conference report was interrupted to allow Mr. James J. Pickle, of Texas, to take the oath of office.

§ 5.19 Administration of the oath of office to a Member-

4. 115 CONG. REC. 28487, 91st Cong. 1st Sess.

5. 109 CONG. REC. 25526, 88th Cong. 1st Sess.

elect was the only business permitted on the day of the death of the Chairman of the Committee on Appropriations.

On May 12, 1964,⁽⁶⁾ the day on which Mr. Clarence A. Cannon, of Missouri, passed away in the early morning hours, the only item of business permitted was the administration of the oath to Mr. William J. Green III, of Pennsylvania.

Form; Record Evidence of Administration

§ 5.20 Where various Members, detained on opening day, were absent for the roll call but were present for the swearing in of Members en masse, the Speaker stated that he would accept the statement of any Member declaring that he was present for the swearing-in ceremony; this was permitted prior to the 1948 amendments to 2 USC §25, establishing record evidence of swearing-in ceremonies.

On Jan. 3, 1945, after Speaker Sam Rayburn, of Texas, had accepted the statements of several Members that they were present

6. 110 CONG. REC. 10695, 88th Cong. 2d Sess.

for the swearing-in ceremony, but were absent for the roll call due to late trains,⁽⁷⁾ the Speaker made a statement on the subject pursuant to a parliamentary inquiry by Mr. Harold Knutson, of Minnesota:⁽⁸⁾

MR. KNUTSON: Mr. Speaker, a number of Members were not in the city at the time the roll call was had but were here in time to be sworn in. What is their status?

THE SPEAKER: The Chair has sworn in quite a number of Members since the roll was called.

MR. KNUTSON: They were sworn in but the Record does not show that they were here.

THE SPEAKER: If any Member says he was here at the time of the swearing in, the Chair will take his statement for it.

§ 5.21 The form of the oath and the record of subscription to the oath of office, as specified by law, appear in the Congressional Record and in the Journal of the House.

In the 91st Congress, the record of the subscription to the oath by Members was printed in the Record of Feb. 18, 1969, as follows:

The oath of office required by the sixth article of the Constitution of the United States, and as provided by sec-

- 7. 91 CONG. REC. 14, 79th Cong. 1st Sess.
- 8. 91 CONG. REC. 16, 79th Cong. 1st Sess.

tion 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members and Delegates of the House of Representatives, the text of which is carried in section 1757 of title XIX of the Revised Statutes of the United States and being as follows:

I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by each of the following Members and Resident Commissioner of the 91st Congress, pursuant to Public Law 412 of the 80th Congress entitled "An act to amend section 30 of the Revised Statutes of the United States" (U.S.C., title 2, sec. 25), approved February 18, 1948. . . .⁽⁹⁾

§ 5.22 Copies of the signed oath of office executed by House Members cannot be mandated by the process of ordinary courts without the permission of the House of Representatives.

- 9. 115 CONG. REC. 3788, 91st Cong. 1st Sess., Feb. 18, 1969; H. Jour. 269, 91st Cong. 1st Sess. (1969).

On Jan. 9, 1959,⁽¹⁰⁾ the House was informed by the Clerk of a subpoena from the United States District Court for the Middle District of Pennsylvania, in the case of *United States v John P. Gilroy, Jr., et al.*, No. 12880, criminal, commanding the Clerk of the House to appear before the court with certified copies of the signed oaths of offices executed by a certain Congressman. In response, the House adopted a resolution stating that under the privilege of the House no evidence of a documentary character under the control and in the possession of the House of Representatives could be mandated by process of the ordinary courts without the permission of the House. The resolution further stated that the House would permit the production of certified copies of the oath of office, along with other papers, pursuant to a determination by the court upon the materiality and the relevancy of the papers and documents called for in the subpoena *duces tecum*.

Senate Procedure

§ 5.23 In Senate practice, the oath of office is administered to four Senators at a time in

10. 105 CONG. REC. 363, 86th Cong. 1st Sess.

alphabetical order; each four Senators are accompanied to the desk by four other Senators.

On Jan. 3, 1953,⁽¹¹⁾ Vice President Alben W. Barkley, of Kentucky, announced as follows:

The Secretary will now call, alphabetically, and in groups of four, the names of the Senators-elect who as their names are called will advance to the desk and the oath of office will be administered to them.

The legislative clerk called the names of the first four Senators, who were escorted to the desk by four other Senators.

§ 5.24 Although the House regularly authorizes the administration of the oath to absent Members-elect, the Senate has done so only on rare occasions, one occurring since 1936.

On many occasions, the House authorizes the administration of the oath at the beginning of a new Congress to absentees, either by the Speaker himself or through deputies.⁽¹²⁾ The Senate, however, has provided such authorization on only two recorded occasions, the first on May 3, 1929,⁽¹³⁾ and

11. 99 CONG. REC. 7, 83d Cong. 1st Sess.

12. See §§ 5.8, 5.9, and 5.11, *supra*. See also 6 Cannon's Precedents §§ 14-16.

13. 71 CONG. REC. 833, 71st Cong. 1st Sess.

the second on Jan. 3, 1973, when the Secretary of the Senate was authorized by resolution to administer the oath of office to Senator-elect Joseph R. Biden, of Delaware, absent because of a death in his family.⁽¹⁴⁾

§ 6. Challenging the Right to be Sworn

When the Speaker directs the membership-elect of the House to arise to take the oath of office, any Member-elect may challenge the right of any other Member-elect to be sworn at that time.⁽¹⁵⁾

14. 119 CONG. REC. 9, 93d Cong. 1st Sess.

15. For the procedure of challenging, see §6.1, *infra*. The authority to challenge the right of a Member-elect to be sworn is based on U.S. Const. art. I, §5, clause 1, which constitutes the House as the sole judge of the elections, returns, and qualifications of Members. Challenges are made before the oath is administered because the oath is given under art. VI, clause 3, to "Representatives before mentioned", meaning those who meet the qualifications and election requirements stated in the Constitution. The right of one Member-elect not yet sworn to challenge the right of another not yet sworn is unquestioned (see 1 Hinds' Precedents §141).

House as judge of qualifications, see *The Power of a House of Con-*

gress to Judge the Qualifications of Its Members, 81 Harv. L. Rev. 673-84 (Jan. 1968).

In stating his objection to the right of another to be sworn, the Member-elect must base his challenge either on his own responsibility as a Member-elect, or on specific grounds.⁽¹⁶⁾ If neither basis is stated to support the challenge, the House may decline to entertain it.⁽¹⁷⁾ A Member-elect may also challenge the right of an entire state delegation to be administered the oath.⁽¹⁸⁾ Usually, such a challenge relates not to the qualifications or elections of the individual members of the state delegation, but to the status of the constituency.⁽¹⁹⁾

When a challenge is proposed, the Speaker asks the challenged Member(s) not to rise to take the oath with the rest of the membership, as the House and not the Speaker determines both the preliminary and the final action to be taken on any challenges.⁽²⁰⁾

gress to Judge the Qualifications of Its Members, 81 Harv. L. Rev. 673-84 (Jan. 1968).

16. See §6.2, *infra*.

17. 1 Hinds' Precedents §455.

18. See, for example, 1 Hinds' Precedents §§457, 460-462.

19. See *Parliamentarian's Note*, §6.4, *infra* (systematic state denial of voting rights). For occasions following the Civil War when entire state delegations were challenged on the ground of collective disloyalty, see 1 Hinds' Precedents §§457, 460-462.

20. See §6.1, *infra*. The statement has been made that the Speaker may,

When the right to be sworn of an individual Member-elect is challenged, he generally loses no rights thereby,⁽¹⁾ except for his right to vote.⁽²⁾ While his case is pending, he may be permitted to debate his own right to the seat,⁽³⁾ and may serve on committees.⁽⁴⁾

but is not required to, direct the challenged Member-elect to stand aside (1 Hinds' Precedents §§143-146). The Speaker has held, however, that such request is a matter of order, for the convenience of procedure (1 Hinds' Precedents §145). The Speaker has recently held that debate on the right to be sworn of a challenged Member-elect is not in order until after the remaining Members have been sworn (see §6.3, *infra*).

1. See 1 Hinds' Precedents §155. See §2, *supra*, for the status of Members-elect.
2. After the membership of the House has been sworn in en masse, Members-elect who have not taken the oath due to absence or due to challenges are not entitled to vote until being sworn. See §2.2, *supra*.
3. See §2.5, *supra*. Rule XXXII clause 1, *House Rules and Manual* §919 (1973) grants the privilege of the floor to contestants in election cases.
4. See 4 Hinds' Precedents §4483. This is the traditional view, as stated by Jefferson's Manual: ". . . Before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn." *House Rules and Manual*

Challenged cases are taken up in the order in which challenges were made.⁽⁵⁾

The pendency of a challenge does not preclude the entertainment of other business before the House, and all other organizational business may be completed before a challenge is resolved.⁽⁶⁾ By unanimous consent, the House may also proceed to general legislative business pending consideration of the right of a Member to be sworn.⁽⁷⁾

After the unchallenged membership of the House has been sworn, some preliminary action is usually taken on each challenge. The House may simply seat a Member by authorizing the administration of the oath; such a resolution may determine his *prima facie* as well as final right to the seat.⁽⁸⁾ A com-

§300 (1973). For a summary of the rights and privileges of Members-elect not yet sworn, see §2, *supra*.

5. See 1 Hinds' Precedents §§147, 148. Where a division is demanded on one resolution to seat several claimants, the oath may be administered to each as soon as his case is decided (see 1 Hinds' Precedents §623).
6. See 1 Hinds' Precedents §474.
7. See 1 Hinds' Precedents §§151, 152.
8. See, for example, the resolution at §6.5, *infra*. The Member proposing a resolution to seat a challenged Member-elect may, prior to the adoption of rules, move the previous question and cut off all debate on the subject,

mon type of resolution authorizes the administration of the oath to the challenged Member-elect based on his prima facie right to the seat, but refers the determination of his final right to committee.⁽⁹⁾ The third type of resolution refers the prima facie as well as the final right to the seat to committee, without authorizing the administration of the oath.⁽¹⁰⁾ The determination by the House as to which kind of resolution to adopt depends on both the sufficiency of the credentials and on

since House Rule XXVII clause 3 (House *Rules and Manual* §907 [1973]), allowing 40 minutes debate in certain situations when the previous question is moved, is inapplicable prior to the adoption of rules (see Ch. 1, supra, for a full discussion; see §5.5, supra, for a recent instance thereof). If the previous question is rejected, or if the proposing Member yields for the purpose, amendments may be offered, if germane, to a resolution authorizing the administration of the oath to a Member-elect (see Ch. 1, §12, supra, for a general discussion; see Ch. 1, §12.7, supra, for an occasion where such an amendment was held not germane).

9. Admission on prima facie right, without regard to final right, usually occurs when the Member-elect comes from a recognized constituency, with credentials in due form and with unquestioned qualifications (see 1 Hinds' Precedents §§528-534)
10. See §§6.6, 6.7, infra.

the strength of the grounds for challenge.⁽¹¹⁾

Except for the exclusion of Members-elect from the Clerk's roll for irregularities in credentials, no action is taken upon the right of a Member-elect to his seat until the time comes for his taking the oath. Therefore, when a Representative-elect was excluded from the 90th Congress and was re-elected to the same Congress after a vacancy in the seat had been declared, Speaker John W. McCormack, of Massachusetts, ruled that no action would be taken upon his right to membership until he appeared to take the oath and was challenged once again.⁽¹²⁾

Forms

Form of resolution providing that a Member, who had been asked to stand aside when the oath was administered to the other Members, be permitted to take the oath of office.

Resolved, That the gentleman from Missouri, Mr. Morgan M. Moulder, be now permitted to take the oath of office.⁽¹³⁾

11. For specific election contests and House action thereon, see Ch. 9, infra.
12. See §6.8, infra, for the ruling. See §6.9, infra, for the challenge that was made when the Representative-elect appeared to take the oath.
13. 107 CONG. REC. 24, 87th Cong. 1st Sess., Jan. 3, 1961.

Form of resolution authorizing the Speaker to administer the oath of office to a challenged Member-elect and providing that the question of final right to his seat be referred to the Committee on House Administration.

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Arkansas, Mr. Dale Alford.

Resolved, That the question of the final right of Dale Alford to a seat in the 86th Congress be referred to the Committee on House Administration, when elected, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution.⁽¹⁴⁾

Form of resolution providing that the question of the right of either of two contestants for a seat be referred to the Committee on House Administration, and providing that until that committee has reported, and the House decided, neither the Member-elect nor the contestee should take the oath of office.

Resolved, That the question of the right of J. Edward Roush or George O. Chambers, from the Fifth Congressional District of Indiana, to a seat in the 87th Congress be referred to the Committee on House Administration, when elected, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution; and be it further.

Resolved, That until such committee shall report upon and the House decide the question of the right of either J. Edward Roush or

14. 105 CONG. REC. 14, 86th Cong. 1st Sess., Jan. 7, 1959.

George O. Chambers to a seat in the 87th Congress, neither shall be sworn.⁽¹⁵⁾

Form and Procedures of Challenges

§ 6.1 A Member-elect challenges the right of another Member-elect to take the oath prior to the swearing in of Members-select en masse, whereupon the Speaker requests the challenged Member-elect to stand aside.

On Jan. 5, 1937,⁽¹⁶⁾ after Speaker William B. Bankhead, of Alabama, had requested the membership of the House to rise for the administration of the oath of office, Mr. John J. O'Connor, of New York, arose and said:

Mr. Speaker, I ask that the gentleman from New Hampshire [Mr. Jenks] stand aside.

Despite the fact that a certificate of his election has been filed with the Speaker, it may be impeached by certain facts which tend to show that he has not received a plurality of the votes duly cast in that congressional district.

THE SPEAKER: The gentleman from New Hampshire will stand aside momentarily.⁽¹⁷⁾

15. 107 CONG. REC. 24, 87th Cong. 1st Sess., Jan. 3, 1961.

16. 81 CONG. REC. 13, 75th Cong. 1st Sess.

17. For examples of similar requests by the Speaker when challenges have

§ 6.2 A Member-elect challenging the right of another to be sworn offers, as a basis for challenge, either his own responsibility as a Member-elect, or the strength of documents, or both.

On Jan. 10, 1967,⁽¹⁸⁾ Member-elect Lionel Van Deerlin, of California, stated a challenge to the right of another Member-elect to be sworn in the following terms:

Mr. Speaker, upon my responsibility as a Member-elect of the 90th Congress, I object to the oath being administered at this time to the gentleman from New York [Mr. Adam C. Powell]. I base this upon facts and statements which I consider reliable. ...

The same language has often been used to propose challenges,⁽¹⁹⁾ although on Jan. 3, 1937,⁽²⁰⁾ Member-elect John J. O'Connor, of New York, stated a challenge not

been made, see 111 CONG. REC. 18, 19, 89th Cong. 1st Sess., Jan. 4, 1965; 113 CONG. REC. 14, 90th Cong. 1st Sess., Jan. 10, 1967; 115 CONG. REC. 15, 91st Cong. 1st Sess., Jan. 3, 1969.

18. 113 CONG. REC. 14, 90th Cong. 1st Sess.

19. See, *e.g.*, statement of Mr. William F. Ryan (N.Y.), 111 CONG. REC. 18, 89th Cong. 1st Sess., Jan. 4, 1965; statement of Mr. Clifford Davis (Tenn.), 107 CONG. REC. 23, 87th Cong. 1st Sess., Jan 3, 1961.

20. 81 CONG. REC. 13, 75th Cong. 1st Sess.

on the basis of his responsibility but on facts tending to show that the challenged Member-elect had not received a plurality of votes in the district from which elected.⁽¹⁾

Debate on Challenges

§ 6.3 It is not in order to debate a challenged Member's right to take the oath of office at the beginning of a Congress until the remaining Members-elect have been sworn in.

On Jan. 5, 1937,⁽²⁾ after Mr. John J. O'Connor, of New York, had challenged the right of a Member-elect to take the oath, Mr. Bertrand H. Snell, of New York, arose to state certain remarks as to the certificate held by the challenged Member-elect and as to the principle that in standing aside, the challenged Member-elect yielded none of his rights or privileges as a Member of the House. Mr. O'Connor then arose to state a point of order, as follows:

MR. O'CONNOR: Mr. Speaker, I make the point of order that at this par-

1. If a challenge does not propose either the strength of documents or the responsibility of the challenging Member-elect, the House will not entertain it. 1 Hinds' Precedents §455.

2. 81 CONG. REC. 13, 75th Cong. 1st Sess.

particular time the matter is not debatable. . . .

MR. SNELL: I think I have the right to make this statement now and under the circumstances should be allowed to make it.

THE SPEAKER:⁽³⁾ The request made by the gentleman from New York was that the gentleman holding the certificate of election from the State of New Hampshire stand aside momentarily.

The Chair is of the opinion that he waives no rights and just as soon as the other Members take the oath the matter can be settled. ...

The Chair will recognize the gentleman later if he desires to extend his argument.

Challenge to a Delegation

§ 6.4 The right of an entire state delegation of Representatives-elect to take the oath may be challenged.

On Jan. 4, 1965,⁽⁴⁾ Mr. William F. Ryan, of New York, challenged, on his behalf and on the behalf of a number of colleagues, the right of the Representatives-elect from Mississippi (Mr. Abernathy, Mr. Whitten, Mr. Williams, Mr. Walker, and Mr. Colmer) to take the oath of office. Speaker John W. McCormack, of Massachusetts, requested the Representatives-elect from Mississippi as well as a challenged Member-elect from another

3. William B. Bankhead (Ala.).

4. 111 CONG. REC. 18, 19, 89th Cong. 1st Sess.

state not to rise to take the oath with the other Members being sworn in en masse.

Parliamentarian's Note: The challenge to the Mississippi delegation was based on the constitutional argument that systematic denial of Negro voting rights throughout Mississippi invalidated the election of the entire House delegation from that state.

§ 6.5 The House may authorize, through one resolution, the administration of the oath to an entire state delegation which has been challenged.

On Jan. 4, 1965,⁽⁵⁾ after unchallenged Members of the House had been sworn in, the following resolution was offered, in relation to an entire state delegation that had been challenged:

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentlemen from Mississippi, Mr. Thomas G. Abernathy, Mr. James L. Whitten, Mr. John Bell Williams, Mr. William M. Colmer, and Mr. Prentiss Walker.

Immediately after the adoption of the resolution, the five Members-elect from Mississippi were sworn in all at one time.

5. 111 CONG. REC. 18, 19, 89th Cong. 1st Sess.

Preliminary House Action on Challenges

§ 6.6 When two persons claimed a seat in the House from the same congressional district, one with a certificate of election signed by the Governor of the state and the other with a certificate of election from a citizens' election committee of the congressional district, the House refused to permit either to take the oath of office and referred the question of their prima facie as well as final right to the seat to the Committee on Elections.

On Jan. 3, 1934,⁽⁶⁾ the Clerk of the House, South Trimble, transmitted to the House a signed certificate of the Governor of Louisiana attesting to the election of Mrs. Bolivar E. Kemp, Sr., to fill the vacancy caused by the death of the Honorable Bolivar E. Kemp. He also transmitted a communication from the Citizens' Election Committee of the Sixth Congressional District of the State of Louisiana in the form of a certificate of election of Mr. J.Y. Sanders, Jr., to fill the same vacancy. The House then adopted the following resolution:

Resolved, That the question of prima facie as well as the final right of Mrs.

6. 78 CONG. REC. 11, 12, 73d Cong. 2d Sess.

Bolivar E. Kemp, Sr., and J.Y. Sanders, Jr., contestants, respectively, claiming a seat in this House from the Sixth District of Louisiana, be referred to the Committee on Elections No. 3; and until such committee shall have reported in the premises and the House decided such question neither of said contestants shall be admitted to a seat.

§ 6.7 The House agreed to a resolution excluding a Member-elect pending an investigation of his right to the seat, which referred to a select committee questions of his right to be sworn and to take the seat, permitted him pay and allowances of the House pending a final determination, and required the committee to report back to the House within a prescribed time.

On Jan. 10, 1967,⁽⁷⁾ the House agreed to a resolution excluding Mr. Adam C. Powell, Jr., of New York, from his seat pending the final determination of his right to be sworn:

Resolved, That the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of

7. 113 CONG. REC. 24-26, 90th Cong. 1st Sess.

nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House.

For the purpose of carrying out this resolution the committee, or any subcommittee thereof authorized by the committee to hold hearings, is authorized to sit and act during the present Congress at such times and places within the United States, including any Commonwealth or possession thereof, or elsewhere, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary; except that neither the committee nor any subcommittee thereof may sit while the House is meeting unless special leave to sit shall have been obtained from the House. Subpoenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

Until such question and right have been decided, the said Adam Clayton Powell shall be entitled to all the pay, allowances, and emoluments authorized for Members of the House.

The committee shall report to the House within five weeks after the

members of the committee are appointed the results of its investigation and study, together with such recommendations as it deems advisable. Any such report which is made when the House is not in session shall be filed with the Clerk of the House.

Challenge to Member Once Excluded

§ 6.8 Where a Representative-elect, excluded from membership in a particular Congress is re-elected to the same Congress, it is for the House to determine the procedure to be followed if and when he appears to take the oath; no action is taken until such time that the Representative-elect appears to take the oath and is again challenged.

On May 1, 1967,⁽⁸⁾ Speaker John W. McCormack, of Massachusetts, responded to a parliamentary inquiry as to the necessity of the House to take affirmative action when a Representative-elect, excluded from membership "in the Ninetieth Congress", by resolution, was re-elected to the same Congress. The Speaker stated that when the Member appeared, if he was challenged, it would be a matter for the House to decide and for the

8. 113 CONG. REC. 11298, 90th Cong. 1st Sess.

House to express its will upon. He stated that the leadership intended to take no action with regard to the seating of such Member until he appeared to take the oath.

§ 6.9 The right to take the oath of a Member-elect, who had been excluded by resolution from membership in the 90th Congress, was challenged in the 91st Congress.

On Jan. 3, 1969,⁽⁹⁾ the right to be sworn of Mr. Adam C. Powell, Jr., of New York, Representative-elect to the 91st Congress, was challenged. Mr. Powell had been excluded by the House from membership in the 90th Congress. The Speaker⁽¹⁰⁾ asked Mr. Powell to

9. 115 CONG. REC. 15, 91st Cong. 1st Sess.

10. John W. McCormack (Mass.).

stand aside while the oath of office was administered to the other Members.

Senate Challenges

§ 6.10 On one occasion, a Senator-elect died while there was pending in the Senate a question as to his right to take the oath of office.

On Jan. 4, 1947,⁽¹¹⁾ the Senate laid on the table the credentials of Mr. Theodore G. Bilbo, of Mississippi, whose seat was challenged, pending the improvement of his physical condition. Mr. Bilbo died on Aug. 21, 1947, before the matter was again brought before the Senate.

11. 93 CONG. REC. 109, 80th Cong. 1st Sess.